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Herbalife International of America, Inc.
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2014 NATIONAL TRADE ESTIMATE REPORT
BELARUS

Comments on General Trade Barriers (USTR-2013-0027)

Country: Belarus

Products: 1803.32 (Meal Replacement Bar)
1806.31 (Protein Bars)
1806.90 (Supplements Containing Cacao)
2104.10 (Soup)
2106.90 (Supplements)
3304.90 (Personal Care)
3305.10 (Shampoo)
3305.30 (Hair Lacquer)

Other Market Access Barriers: **SERVICES BARRIERS**

Distribution Services**Food Supplements and Health Food Products:**

Belarus limits the sale of food supplements, known as 'Biologically Active Food Supplements' (BAFS), to pharmacies and specialized stores (Law of Belorussia "On quality and safety of food ingredients and products for people's life and health" # № 217-Z dated June 29, 2003).

This distribution restriction severely limits Herbalife's ability to sell products in this market through direct selling, contrary to the practice in most countries. The stated purpose of the restriction is to ensure quality and consumer protection. BAFS are sold throughout the world through direct selling including in jurisdictions such as the EU and the U.S., which have stringent regulatory structures in place to ensure food safety and quality. There is no justification from a consumer protection or product safety perspective for the existence of this restriction, and the Belarusian government should be encouraged to remove it.

MARKET ACCESS BARRIERS**Customs Value Adjustments**

Customs authorities regularly impose adjustments of customs value. This results in higher customs payments; duty is increased by up to 135% versus what was initially declared. This poses a potential risk for shipments to Russia and Kazakhstan. As Belarus is part of the Customs Union, there is a risk that such customs value adjustments can be considered when assessing value of products imported into Russia and Kazakhstan.

Potential Increase in U.S. Exports: **Less than \$5 million**

Nutrition for a better life.

About Herbalife:

Herbalife is a global nutrition company that has helped people pursue an active, healthy life since 1980. Our products, which include protein shakes and snacks, energy and fitness drinks, vitamins and nutritional supplements, and a complete bath and body care line, are available exclusively through our independent distributors in more than 80 countries.

- Herbalife achieved net sales of \$4.1 billion in 2012.
- Herbalife believes the quality of its products and the effectiveness of its distribution network, coupled with geographic expansion, have been the primary reasons for our success throughout our 33-year history.
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2014 NATIONAL TRADE ESTIMATE REPORT
COLOMBIA

Comments on General Trade Barriers (USTR-2013-0027)

Country:	Colombia
Products:	Foods
Classification Numbers:	1806.90, 2106.10, 2106.90 (Supplements) 2101.20 (Teas)
Other Market Access Barriers:	<p><u>Certificates of Export for Food Products:</u> Per Decree 3075 (1997), a Sanitary Certificate must be provided for each shipment for those products classified by Colombia's National Institute of Food and Drug Monitoring (INVIMA) as foods. These certificates are not common in international trade (they are different from phytosanitary certificates that are used for raw products) and their purpose is not clear.</p> <p>The requirement to obtain Sanitary Certificates is time-consuming and requires a long-lead time, as they must be secured from local state health agencies in the U.S. Our experience has been this takes from between three weeks to four months per formula-specific Sanitary Certificate. Because specific shipment information must be included on the certificate (e.g. lot number, expiration and quantity), certificates cannot be ordered before a shipment is scheduled to ship. Standard ocean and air shipment clearances are affected due to the certificate lead-times because shipment time is less than some of the export lead-times. The result is that inventory must be closely managed so shortages do not occur while shipments are waiting to clear.</p>
Potential Increase in U.S. Exports:	\$5 to 10 million
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2014 NATIONAL TRADE ESTIMATE REPORT
COSTA RICA

Comments on General Trade Barriers (USTR-2013-0027)

Country:	Costa Rica
Products:	Food, Natural Products, Dietary Supplements, and Personal Care Products
Classification Numbers:	1806.90.00, 2106.90.79, 2106.90.99 - Nutritional Supplements 2101.20.00 – Powdered Tea Product 2106.10.00 - Protein Powder 1517.90.90 - Herbalifeline 3304.99.00 - Personal Care products
Market Access Barriers:	SERVICES BARRIERS

Costa Rica's Social Security Administration (CCSS) has interpreted Herbalife distributors to be employees and declared that social security taxes are owed. This would make Herbalife's business model unsupportable in Costa Rica. Herbalife has engaged with CCSS, the Ministries of Foreign Trade and Foreign Affairs, and the U.S. Embassy in Costa Rica, asserting that the action is both erroneous and illegal under both local and international law (DR-CAFTA).

On December 4, 2012, the CCSS included 440 independent distributors in Herbalife's payroll as company employees (which they are not) through a unilateral measure and without previously notifying the company.

This charge was imposed by the CCSS without a proper legal justification and without properly notifying the company. On January 15, 2013, the CCSS attempted to justify these actions by claiming that its decision is based on article 14 of the Regulation to Verify the Compliance of Employer and Independent Employees' Obligations. Herbalife contested both actions with administrative claims filed on January 9, 2013; January 18, 2013; and January 21, 2013.

On March 22, 2013, Herbalife paid, under protest, the amounts charged by CCSS in the November 2012 payroll. Herbalife was forced to make this payment due to the operational difficulties resulting from being listed in default with CCSS.

The procedure followed by the CCSS for the charge contains serious violations to due process since the company was not previously notified and the procedure was wrongly applied. This could be an issue under article 10.5 of DR-CAFTA.

**Potential Increase in
U.S. Exports:****Less than \$5 million****About Herbalife:**

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2014 NATIONAL TRADE ESTIMATE REPORT
ARGENTINA

Comments on General Trade Barriers (USTR-2013-0027)

Country: Argentina

Products: Nutritional Supplements, Protein Drink Mixes and Fish-oil Capsules

Classification numbers: 2101.20 (Powder Tea Product), 2106.90 and 1806.90 (Protein Drink Mixes containing whey protein)

Market Access Barriers: **Import Substitution Policies and Currency Controls**

Argentina has adopted some controls to protect the internal market and to maintain the reserves of international currency. In the scope of the imports substitution policy, the country has implemented the sworn affidavit (DJAI), which requires importers to electronically file an affidavit, providing specific information about the goods they want to import such as quantity, FOB value, weight and unit of measure. Once it receives the request of importation, the Federal Administration (AFIP) has three days to review the declaration and determine whether to “approve” it or “observe” it. If another government agency such as the Secretary of Commerce wishes to review the declaration as well, it can take an additional 15 days. Once the declaration is approved, importers have to respect the information declared and changes are not acceptable. The criteria used by AFIP whether to “approve” or “observe” an affidavit is not clear. This policy also aims to encourage domestic production; however, many of the national industries rely on the importation of inputs. One of the results of this policy is the failure of small industries.

Herbalife is also impacted by Argentina’s “one to one” policy. According to this policy, for every dollar of goods imported, the importing company must export an equivalent dollar amount or invest in the local manufacturing. Upon receiving an approval to import goods, companies must pledge to export an equivalent amount during the following year.

Other Market Access Barriers

Argentina has adopted some phytosanitary barriers that are imposed by the National Administration of Medicament, Food and Medical Technology (ANMAT) and the National System of Alimentary Vigilance (INAL). For importing cosmetics, Herbalife must present to ANMAT documents signed by its technical director that prove that they are not harmful for human use. Obtaining this sales authorization may take up to one week.

For dietary supplements importation, documents are required that state that the product is harmless for humans to consume. These must be signed by a technical director and presented to INAL. The Certificate of Free Circulation takes two weeks or more to obtain from INAL.

**Potential
Increase in
U.S. Exports:**

\$5 to \$10 million

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2014 NATIONAL TRADE ESTIMATE REPORT
EUROPEAN UNION

Comments on General Trade Barriers (USTR-2013-0027)

Country:	European Union – Austria, Belgium, Bulgaria, Cyprus, France, Greece, Hungary, Luxembourg, Malta and Portugal
Products:	Nutritional Supplements - (Food, Food Supplement, Dietetic Meal Replacement Products and Energy Drinks) Other Food Items: Edible Oils and Chocolate Products Personal Care Products
Classification Numbers:	1803.32 (Meal Replacement Bar) 1806.90.90 (Other Food Items) 1806.31 (Protein Bars) 1806.90 (Supplements Containing Cacao) 2104.10 (Soup) 2106.10.20, 2106.90.92, 2106.90.98 (Nutritional Supplements) 2106.90 (Supplements) 3304.90 (Personal Care) 3305.10 (Shampoo) 3305.30 (Hair Lacquer)
Tariffs Barriers:	2106.90.92 – 9%; 2106.90.98 – 12.8%; 1806.90.90 – 8.3%;
Other Market Access Barriers:	SERVICES BARRIERS

Distribution Barriers Affecting Food Supplements and Health Food Products**Information Note: Product-Specific Distribution Restrictions**

The first section of this submission details prohibitions relating to food supplements and meal replacement products sold through a direct selling method of distribution in several European Union (EU) Member States. Such restrictions are the main type of distribution barrier faced by Herbalife in the EU. These restrictions clearly inhibit the ability of Herbalife to operate in the Member States in question. EU legislation provides detailed rules on the composition and labeling of food supplements and meal replacement products. Member States also have processes in place for the notification of such products to the relevant authorities so that the authorities can ensure that these requirements are met. Food supplements are supplied to customers in pre-dosed form. Food supplements and meal replacement products are also provided to customers in tamper-evident packaging with clear instructions for use. General EU food law along with specific EU legislation on food hygiene also applies to the preparation, storage and transport of food supplements and meal replacement products. Furthermore, specific EU Legislation ensures that any health and nutrition claims used on the labeling of food products and in commercial communications form part of a list that has been subject to a pre-market approval process. Pre-market approval is granted by the European Commission and Member State governments on the basis of advice provided by the European Food Safety Authority.

In one Member State (Austria) a restriction on the sale of cosmetics via direct selling is also in place that is covered in this submission. The compositional, labeling and safety requirements for Cosmetic products are fully harmonized in the EU through Regulation (EC) 1223/2009¹. The longstanding existence of a harmonized EU regulatory structure facilitates the marketing of cosmetic products across the EU under a single legal regime.

Clear rules that are specifically designed to provide consumers with protection in direct sales transactions also exist. Directive 2011/83/EU on consumer rights², adopted in 2011, further reinforces the protection afforded to consumers in direct sales transactions. **The restrictions cited in this submission on the sale of food supplements, meal replacement products and cosmetics through direct selling provide no additional protection to consumers but unnecessarily hamper trade.** There are clearly no safety concerns that justify restricting the sale of these products through direct selling. The fact that such products are sold via direct selling without problem in other EU Member States reinforces the fact that there is no justification for maintaining the current restrictions. In all the instances listed in this submission, the governments in question should be encouraged to remove the restrictions.

Austria:

There is a prohibition on the sales of food supplements and cosmetics through direct selling enshrined in national law in Austria. The existence of this provision clearly restricts Herbalife's ability to sell products in this market through direct selling contrary to practice in other EU markets.

Bulgaria:

In implementing the EU Hygiene Regulation (852/2004)³, Bulgaria added a national restriction for the sale of food supplements and health food products limiting distribution to pharmacies and specialized stores. This distribution restriction severely limits direct sales companies in their ability to sell their products contrary to the practice in the great majority of EU Member States.

Cyprus:

In implementing the EU Food Supplements Directive (2002/46/EC)⁴, Cyprus restricts the sale of food supplements to pharmacies and specialized stores. This distribution restriction severely limits direct sales companies in their ability to sell their products contrary to the practice in the great majority of EU Member States.

Greece:

¹ REGULATION (EC) No 1223/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 November 2009 on cosmetic products, published in the Official Journal L342/59 on 22 December 2009.

² DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, published in the Official Journal L304/64 on 22 November 2011.

³ CORRIGENDUM TO REGULATION (EC) No 852/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the hygiene of foodstuffs, published in the Official Journal L226/3 on 25 June 2004.

⁴ DIRECTIVE 2002/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements, published in the Official Journal L183/51 on 12 July 2002.

In implementing the EU Food Supplements Directive (2002/46/EC)⁵ and the Energy Restricted Diets Directive (96/8/EC)⁶, Greece restricts the sale of both food supplements and protein-based meal replacement products to pharmacies and specialized stores. These distribution restrictions severely limit Herbalife's ability to sell products in this market through direct selling, contrary to the practice in majority of other EU markets.

The Ministry of Health has draft legislation that would permit the sale of food supplements beyond just pharmacies, but this initiative does not allow for the sale of food supplements and protein-based meal replacement products through direct sales.

Hungary:

The national legislation governing direct selling in Hungary contains a provision that restricts the door to door selling of foodstuffs to 2 categories – fruits and vegetables. This provision though not actively enforced could potentially create significant difficulties for Herbalife.

Malta:

The government in Malta has exercised a provision in national law that restricts the sale of food supplements to pharmacies contrary to the practice in the great majority of EU Member States. This restriction prevents Herbalife entering into this market.

Latvia:

The Department of Health prohibits direct sellers from providing samples of Formula 1 shakes since they are considered dietary food and as per the law these can only be marketed in retail trade and in a pre-packed form. For beverages such as tea and aloe or food supplements that fall under another product classification there is no such prohibition. Latvia is the only county in the EU to have such a rule.

Information Note: Payment Bans, Direct Sales Transactions

The remainder of this submission will address instances where:

- Restrictions are being placed on when payment can be collected in direct sales transactions.
- A limit has been placed on the value of goods that can be purchased via direct selling
- A Member State that has banned direct selling entirely.

A number of EU Member States (Belgium, Greece, France and Portugal) have restrictions in place on when payment can be collected in direct sales transactions. These restrictions are already extremely problematic, as they oblige direct sellers to make multiple trips to the home of a customer to present/demonstrate products/services, to deliver and subsequently to collect payment. In comparison to in-store retail, this places direct sellers at a clear disadvantage. Directive 2011/83/EU on consumer rights⁷ further complicates the situation as it provides for a 14 day

⁵ See Footnote 4

⁶ COMMISSION DIRECTIVE 96/8/EC of 26 February 1996 on food intended for use in energy restricted diets for weight reduction, published in the Official Journal L55/22 on 6 March 1996.

⁷ DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and

cooling off period in which a consumer can choose to withdraw from a direct sales transaction. At present the length of the cooling off period is set at national level. The Directive must be implemented by 13 June 2014 and it remains to be seen if Member States with payment bans will set the period of the payment ban to 14 days so that it runs parallel with the cooling-off period. Combining the requirement of a 14-day cooling-off period and a payment ban, regardless of the approach taken, will make concluding transactions unnecessarily burdensome for direct sellers. Member States with payment bans in place should be encouraged to remove them as they are unnecessarily hampering economic activity and placing direct selling at a disadvantage in comparison to more traditional forms of retail.

Belgium:

Belgian national legislation prohibits payment being collected during the cooling off period. This results in direct sellers having to wait for 8 days after concluding a transaction before collecting payment. This can, in many cases, involve having to physically return to the home of the consumer in order to collect payment.

Belgian national legislation places a €250 limit on the value of goods that can be retailed to a consumer at his/her home via direct selling. This restricts the quantity of products that Herbalife distributors can retail to customers. Existing EU and national legislation already provides sufficient consumer protection for direct selling and regulation of the products sold via this sales channel. The European Commission is currently pursuing legal action against the Belgian government to secure the removal of the €250 transaction limit on the basis that it violates Directive 2005/29/EC on unfair commercial practices⁸. The Belgian government should be encouraged to completely eliminate this transaction limit.

France:

French law prohibits the acceptance of any payment, or promise of payment, within the first 7 days after a direct sales transaction. This results in direct sellers having to wait until the 8th day after concluding a transaction before being allowed to collect payment. This can, in many cases, involve having to physically return to the home of the consumer in order to collect payment.

Greece:

Greek national legislation on the insurance treatment of persons engaging in the sector of direct selling obliges any direct seller to be submitted to the insurance system of OAEE (Self-Employed Workers' Insurance Organization) as all persons over 18 years, regardless of their race and nationality, exercising their activities in Greece, are subject to the Organization's compulsory insurance. This is a limitation to the freedom of trade and overburdening for direct sellers who can be using direct selling as a second income, and among others, the insurance request is disproportionate compared to this income.

repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, published in the Official Journal L304/64 on 22 November 2011.

⁸ DIRECTIVE 2005/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), published in the Official Journal L149/22 on 11 June 2005.

Labor status: A new draft law has been made public indicating that an individual's income will be taxed as salaried income if any individual entrepreneur: (1) provides to three or fewer persons; or (2) provides service to more than three persons, but 75% of revenues is generated from one client. If there is an accompanying obligation on the direct selling companies to treat independent direct sellers as employees, then this will make the business of providing income-earning opportunities altogether unsustainable. Independent direct sellers (entrepreneurs or not), who already pay taxes, should remain independent under Greek labor law.

Discriminatory treatment: Many direct sellers do not qualify as entrepreneurs, acting at an activity level below that of officially recognized entrepreneurs. A draft new law appears to apply a discriminatory tax rate of 26% with no tax reliefs recognized, whereas entrepreneurs are taxed at 21% with appropriate tax reliefs recognized. This discriminatory proposal unfairly penalizes a group who pays the appropriate tax, but do not qualify as entrepreneurs.

Luxembourg:

Direct selling is prohibited under Luxembourg law. This prevents Herbalife operating in what is a small but potentially lucrative market.

Portugal:

Portuguese national legislation provides a general prohibition on the acceptance of payment in advance of the consumer taking delivery of the product/service covered by the direct sales contract. This inconveniences direct sellers as it unnecessarily complicates the process for collecting payment.

**Potential Increase
in U.S. Exports:**

\$10 to \$15 million

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2014 NATIONAL TRADE ESTIMATE REPORT
BRAZIL

Comments on General Trade Barriers (USTR-2013-0027)

Country:	Brazil
Products:	Nutritional Supplements: Protein Drink Mixes, Protein Bars, and Powdered Teas Personal Care Products: Moisturizers, Shampoos and Conditioners
Classification Numbers and Tariffs:	Nutritional Supplements: 1806.31 and 1806.90 – 20%, 2106.90.10 – 14% and 2106.90.30 – 16% Personal Care: 3304.99.10, 3304.99.90, 3305.10.00 and 3305.90.00 – 18%
Other Market Access Barriers:	SERVICES BARRIERS

Direct Selling: Brazil, one of Herbalife's largest markets, does not allow phyto-therapeutic and some vitamin/mineral products to be sold by means of direct sales. Specifically, supplements containing vitamins or minerals in excess of the low Brazilian maximum Daily Recommended Allowance (DRA) values are considered medicines, not foods, and cannot be sold by the direct selling channel. This is inconsistent with Codex guidelines adopted in July 2005 that recommend that upper limits for vitamins and minerals be established by science-based risk assessment.

IMPORT POLICIES

Customs Valuation: The customs clearance process in Brazil can take as long as three weeks, and Brazil's port infrastructure is quite poor. Customs regulations are lacking and the rules are unclear, resulting in inspectors using their personal interpretation of the regulations. This frequently slows down clearance processes. Strikes of federal agencies can also represent a risk: in 2012 ANVISA (Brazilian Health Agency) went on strike for seven weeks (from July 16 to August 31), resulting in a negative impact on the flow of imports.

Cotton Dispute: The WTO has granted Brazil the right to retaliate due to subsidies the U.S. has given to its cotton industry. Brazil put several products on an initial retaliation list that would severely impact Herbalife's business in Brazil. Since 2010, the U.S. has been paying Brazil \$147 million a year in return for the suspension of retaliatory measures. However, the U.S. recently suspended payments due to budgetary issues. As a result, Brazil is considering retaliatory measures.

Potential Increase in U.S. Exports:	\$25 to \$50 million
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2014 NATIONAL TRADE ESTIMATE REPORT
MEXICO

Comments on General Trade Barriers (USTR-2013-0027)

Country: Mexico

Products: Food and Food Supplements

Tariff Numbers: 2106.90.99 (Food Supplements)
2101.20.01 (Teas)
1806.31.01 and 1806.32.01 (Bars)
1806.90.99 (Cocoa Products)

Market Access Barriers: IMPORT POLICIES

Tariff and Market Access
Administrative Procedures and Custom Practices

Discriminatory VAT Administration: The Government of Mexico has adopted VAT regime criteria which appear to discriminate against U.S.-originating food supplements in favor of domestically-produced “like” products. In Mexico, food products qualify for a 0% VAT if they are “products for nourishment” and they are not beverages; all other products face a 16% VAT. In April 2005, Mexico’s tax authorities determined that nutritional supplements did not qualify as “products of nourishment” and, therefore, were not eligible for the tax exemption. Appeals to the Government of Mexico are pending. Owing to a delay in Mexico’s SAT computer system, tax authorities did not begin collecting the 16% VAT on imported products until 2007. U.S. industry has provided USTR and DOC evidence that Mexico’s tax authorities are collecting the 16% VAT on imports from the U.S., but not on domestic sales of “like” nutritional products. This discrimination is a clear violation of NAFTA Article 301 and Article III GATT 1947.

On May 13, 2011, the Mexican Tax Administration Service issued a resolution nullifying a prior assessment involving Herbalife in an amount equivalent to approximately \$89 million USD, translated at the period ended spot rate, for various items, the majority of which was VAT allegedly owed on certain of Herbalife’s products imported into Mexico during years 2005 and 2006. Since the Mexican Tax Administration Service can re-issue some or all of the original assessment, Herbalife commenced litigation in the Tax Court of Mexico in August 2011 to dispute the assertions made by the Mexican Tax Administration Service in the case. The Mexican Tax Administration Service filed a response which was received by Herbalife in April 2012. The response challenged the assertions that Herbalife made in its August 2011 filing. Litigation in this case is currently ongoing.

The Mexican Tax Administration Service commenced audits of Herbalife’s Mexican subsidiaries for the period from January to September 2007 and on May 10, 2013, the company received an assessment of approximately \$23 million, translated at the period ended spot rate, related to that period. On July 11, 2013 the Company filed an administrative appeal disputing the assessment.

The Mexican Tax Administration Service audited Herbalife's Mexican subsidiaries for the 2011 year. The audit focused on importation and VAT issues. On June 25, 2013, the Mexican Tax Administration Service closed the audit of the 2011 year without any assessment.

Herbalife has not recognized a loss with respect to any of these Mexican matters as the company, based on analysis and guidance from our advisors, do not believe a loss is probable. Further, Herbalife is currently unable to reasonably estimate a possible loss or range of loss that could result from an unfavorable outcome if the assessment was re-issued or any additional assessments were to be issued for these or other periods. The company believes that it has meritorious defenses if the assessment is re-issued or would have meritorious defenses if any additional assessment is issued. Any adverse outcomes in these matters could have a material impact on the company's financial condition and operating results.

Certificates of Free Sale: A certificate is required for each product and must be renewed annually unless there's a stated expiration date of less than a year (as with California certificates that expire after 180 days). But, the Ministry of Health (MOH) and Mexican customs use other information on the certificate to declare it "expired", such as if the date of the Notary's commission has passed or if the certificate states that more than one year has passed since the date of a manufacturer's last inspection by the State Health Department. Despite the certificate expiration date, any date on the certificate can trigger a one-year countdown to expiration by the MOH.

Proposed Tax on "Flavored Beverages that Contain Added Sugars"

There is a current proposal to impose a Special Tax to Production and Services (IEPS) on "Flavored Beverages that Contain Added Sugars." The government has indicated that this tax is proposed as result of the obesity problem in Mexico and is aimed at "sweetened flavored drinks with no nutritional value and high calories" (i.e. sodas and soft drinks). ANAISA (Mexican Nutritional Supplements Association) has officially requested that the government explicitly exclude nutritional supplements from the imposition of IEPS on "flavored beverages that contain added sugars." There is concern that if nutritional supplements are not explicitly excluded in the legislation, the tax authorities will eventually try to apply the tax to these products.

**Potential Increase
in U.S. Exports:**

\$75 to \$100 million

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2014 NATIONAL TRADE ESTIMATE REPORT
PARAGUAY

Comments on General Trade Barriers (USTR-2013-0027)

Country:	Paraguay
Products:	Nutritional Supplements, Protein Drink Mixes, and Powdered Teas
Classification Numbers and Tariff Barriers:	2106.90 (Supplements): 16% 2102.20 (Teas): 16%
Market Access Barriers:	SERVICES BARRIERS Distribution Services <u>Restrictions on Direct Selling:</u> Products classified as Over-the-Counter (Medicamentos de Venta Libre) or phytopharmaceutical (botanical-based products) are restricted to sale in pharmacies and cannot be sold by direct sales. Since Herbalife's business is conducted exclusively through direct selling, the restriction significantly reduces the company's ability to conduct business in Paraguay.
Potential Increase in U.S. Exports:	Less than \$5 million
About Herbalife:	Herbalife is a global nutrition company that has helped people pursue an active, healthy life since 1980. Our products, which include protein shakes and snacks, energy and fitness drinks, vitamins and nutritional supplements, and a complete bath and body care line, are available exclusively through our independent distributors in more than 80 countries. <ul style="list-style-type: none">• Herbalife achieved net sales of \$4.1 billion in 2012.• Herbalife believes the quality of its products and the effectiveness of its distribution network, coupled with geographic expansion, have been the primary reasons for our success throughout our 33-year history.• Herbalife pursues profitability and growth to increase shareholder value.

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2014 NATIONAL TRADE ESTIMATE REPORT
UKRAINE

Comments on General Trade Barriers (USTR-2013-0027)

Country:	Ukraine
Products:	Dietary Supplements (Biologically Active Food Supplements) Personal Care Products 1803.32 (Meal Replacement Bar) 1806.31 (Protein Bars) 1806.90 (Supplements Containing Cacao) 2104.10 (Soup) 2106.90 (Supplements) 3304.90 (Personal Care) 3305.10 (Shampoo) 3305.30 (Hair Lacquer)
Other Market Access Barriers:	SERVICES BARRIERS Distribution Barriers Affecting Food Supplements and Health Food Products: A Ukrainian by-law restricts the sale of food supplements to pharmacies or specialized retail stores. This distribution restriction severely limits Herbalife's ability to sell products in this market through direct selling, and is contrary to the practice in most countries. Food supplements are sold throughout the world through direct selling including in jurisdictions such as the EU and the U.S., which have stringent regulatory structures in place to ensure food safety and quality. There is no justification from a consumer protection or product safety perspective for the existence of this restriction and the Ukrainian government should be encouraged to remove it.
Potential Increase in U.S. Exports:	Less than \$5 million
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2014 NATIONAL TRADE ESTIMATE REPORT
KAZAKHSTAN

Comments on General Trade Barriers (USTR-2013-0027)

Country:	Kazakhstan
Products:	Nutritional Supplements (Protein Drink Mixes, Herbal Teas, Vitamin Supplements) Personal Care Products (Fragrances and Skin Care) 1803.32 (Meal Replacement Bar) 1806.31 (Protein Bars) 1806.90 (Supplements Containing Cacao) 2104.10 (Soup) 2106.90 (Supplements) 3304.90 (Personal Care) 3305.10 (Shampoo) 3305.30 (Hair Lacquer)
Other Market Access Barriers:	Distribution Barriers Affecting Biologically Active Food Supplements and Health Food Products <p>A Kazakh by-law restricts the sale of 'Biologically Active Food Supplements' (BAFS) products to pharmacies or specialized retail stores. This distribution restriction severely limits Herbalife's ability to sell products in this market through direct selling, contrary to the practice in most countries. BAFS are sold throughout the world through direct selling including in jurisdictions such as the EU and the U.S., which have stringent regulatory structures in place to ensure food safety and quality. There is no justification from a consumer protection or product safety perspective for the existence of this restriction and the Kazakh government should be encouraged to remove it.</p>
Potential Increase in U.S. Exports:	Less than \$5 million
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2014 NATIONAL TRADE ESTIMATE REPORT
RUSSIA

Comments on General Trade Barriers (USTR-2013-0027)

Country: Russia

Products: **Nutritional Supplements (Specialized Nutrition and Biologically Active Food Supplements)**
Personal Care Products
1803.32 (Meal Replacement Bar)
1806.31 (Protein Bars)
1806.90 (Supplements Containing Cacao)
2104.10 (Soup)
2106.90 (Supplements)
3304.90 (Personal Care)
3305.10 (Shampoo)
3305.30 (Hair Lacquer)

Other Market Access Barriers: **SERVICES BARRIERS**

Direct Sales Limitations on Food Supplements and Health Food Products

Since 1998, the Russian Federation has limited the sale of food supplements, known as 'Biologically Active Food Supplements' (BAFS), to pharmacies and specialized stores. This distribution restriction severely limits Herbalife's ability to sell products in this market through direct selling. The stated purpose of the restriction is to ensure quality and consumer protection. However, the quality control and testing procedures which are part of the pre-market authorization system in Russia are more extensive than almost any country in the world and the mechanisms to ensure consumer protection are equally robust. In addition, BAFS are sold throughout the world through direct selling including in jurisdictions such as the EU and the U.S., which have stringent regulatory structures in place to ensure food safety and quality.

MARKET ACCESS BARRIERS
BAFS Classification

There is a Ministry of Health initiative to further regulate the BAFS category by classifying it into two types: nutraceutical and parapharmaceutical. The proposal contains ambiguous definitions and contradicts the Customs Union Technical regulation on food safety. If the proposal goes forward, this would make product classification more complex and will become a significant barrier for getting new products introduced in the Russian market and will impact existing BAFS as well. The EU and U.S. do not have nutraceutical and parapharmaceutical categories in their regulations.

Potential Increase in U.S. Exports: **\$5 to \$10 million**

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2014 NATIONAL TRADE ESTIMATE REPORT VENEZUELA

Comments on General Trade Barriers (USTR-2013-0027)

Country:	Venezuela
Products:	Nutritional Supplements: Protein Drink Mixes, Powdered Teas Personal Care Products
Classification Numbers and Tariffs:	2106.90.72 - Nutritional Supplements – 20% 2106.10.20 - Protein Powder – 5% 3304.99.00 – Personal Care Products – 20% 3303.00.00 – Personal Care Products – 20%

Market Access Barriers: IMPORT POLICIES

High Agricultural Tariffs: In August 2012, Venezuela became a full-fledged member of the MERCOSUR. As part of the requirements of the free trade zone, Venezuela is expected to decrease its tariffs with Brazil, Argentina, Uruguay and Paraguay by about 7% in order to reach an average of 10%. The deadline for tariff adjustments is January 1, 2014, although the country will not be ready to operate in the common market until it satisfies all the requirements of the group, including adjustments in macroeconomic variables.

Outside of MERCOSUR, Venezuela's average tariff for the agricultural sector currently stands at approximately 17 percent, with most agricultural products falling within the 5 percent to 20 percent tariff range.

Nontariff Measures

Foreign Exchange Restrictions: Despite contrary expectations, restrictions on currency exchange have continued and further strengthened. The government justifies these measures in order to support social programs. The measures include:

- CADIVI at 4.3 VEB/USD, the main requisite being the assignment of Certificates of Non-Domestic Production (CNDP's) from the Ministries of Health and Industry/Commerce. Since 2010 Herbalife Venezuela has not received CNDPs and as a consequence has not been able to access CADIVI Dollars.
- SITME at 5.3 VEB/USD. Administered by the Central Bank of Venezuela, access to this mechanism is very restricted and, on average, we are able to trade 330,000 USD per month. These amounts are absolutely insufficient to Herbalife Venezuela, whose imports average USD 5 Million a month.

- USD DENOMINATED PUBLIC BONDS at ~ 6.5 VEB/USD implicit rates. Also directly administered by the Central Bank of Venezuela and the Ministry of Finance, auctions held in the last months have not granted access to the general public.

Access to USD in the free market remains prohibited by law.

SERVICES BARRIERS

Ministry of Health:

The CADIVI process cannot be started until a Certificate of “Non-National Production” is secured from the Ministry of Health. Given that the government does not consider Herbalife products a priority, Herbalife Venezuela has not received any approvals since mid-2010, thus being shut out of the CADIVI process to import goods at the official rate.

**Potential
Increase in
U.S. Exports:**

Less than \$5 million

**About
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2014 NATIONAL TRADE ESTIMATE REPORT**GHANA****Comments on General Trade Barriers (USTR-2013-0027)****Country:** Ghana**Products:** 1803.32 (Meal Replacement Bar)
1806.31 (Protein Bars)
1806.90 (Supplements Containing Cacao)
2104.10 (Soup)
2106.90 (Supplements)
3304.90 (Personal Care)
3305.10 (Shampoo)
3305.30 (Hair Lacquer)**Market Access Barriers:** **SERVICES BARRIERS**

Herbalife registered its food and food supplement products with the Ghana Food Control Board in late 2011 and is up-to-date on its product registrations with the FCB. In early 2013, the Ghana Traditional Medicine Practice Council (TMPC) communicated its view that Herbalife's independent distributors technically constitute a cadre of health care providers under the Traditional Medicine Practice Act of 2000 (Act 575) and therefore these independent distributors will need to register and receive training from TMPC or its accredited agencies. These independent distributors have not yet been registered with, nor received training from the TMPC. Additionally, despite protesting this determination by TMPC, Herbalife had to register as a company with the TMPC, and pay a fine for previous non-compliance. This registration has to be renewed annually.

Potential Increase in U.S. Exports: **Less than \$5 million****About Herbalife:**

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2014 NATIONAL TRADE ESTIMATE REPORT
INDONESIA

Comments on General Trade Barriers (USTR-2013-0027)

Country: Indonesia

Products: Dietary Supplements, Skin Care, Shampoo & Conditioners

Classification numbers: 2106.90, 3304.99, 3305.10, 3305.30, 3923.29 and 8509.04

Market Access Barriers: **SERVICE BARRIERS**

Direct Selling

Pursuant to its so-called "Negative Investment List," Indonesia continues to limit percentage of foreign ownership of certain businesses, including the direct selling industry.

Potential Increase in U.S. Exports: **\$5 to \$10 million**

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2014 NATIONAL TRADE ESTIMATE REPORT
REPUBLIC OF KOREA

Comments on General Trade Measures (USTR-2013-0027)

Country:	Republic of Korea
Products:	Nutritional Supplements: Protein Drink Mixes, Herbal Teas, Vitamin Supplements
Classification Numbers:	2106.90.99: Vitamin, Mineral and Nutrients Supplements 2101.20.90: Teas
Market Access Barriers:	SERVICE BARRIERS: Sales Away from a Fixed Location: Korea's Door-to-Door Sales Act, revised on August 16, 2012, regulates the operation of multi-level marketing (MLM) companies in Korea. The Act requires a 35% sponsoring allowance ceiling (i.e., the maximum compensation allowed for distributors who recruit other distributors as part of their business organization) that discourages direct selling. Other Korean companies, who are classified as Connected Door-to-Door (CDTD) companies, are allowed a 38% sponsoring allowance ceiling. This is unfair treatment of MLM companies operating in Korea. Korea requires MLM companies to join a "Mutual Aid Cooperative" and purchase its "guarantee" insurance. This costs Herbalife approximately \$500,000 annually. Without any operational benefits or financial benefits, this is an unfair burden and additional cost to MLM companies.
Potential Increase in U.S. Exports:	\$10 million
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2014 NATIONAL TRADE ESTIMATE REPORT
PHILIPPINES

Comments on General Trade Barriers (USTR-2013-0027)

Country:	Philippines
Products:	Nutritional Supplements: Protein Drink Mixes, Vitamins, Minerals and Powdered Teas Personal Care Products: Fragrances and Skin Care
Classification Numbers:	2106.90.70 (Nutritional Supplements) 3304.99.90, 3303.00.00 (Personal Care Products)
Tariff Barriers:	2106.90.70 – 7% 3304.99.90 – 7% 3303.00.00 – 15% plus 20% (Specific Tax on Alcohol)
Other Market Access Barriers:	IMPORT POLICIES <i>Customs Barriers:</i> <u>Customs Valuation:</u> Herbalife has experienced custom challenges involving valuations of products. Previously Philippine Customs, particularly at Ninoy Aquino International Airport, has not recognized the “free on board” (FOB) prices from the company’s standard price list, as is the common practice. Instead, Customs authorities have applied a higher dutiable value based on the retail price or prices of other companies importing the same product category. Customs is now also requiring a price list authenticated by the Embassy of the Philippines in the exporting country, and a supply and distribution agreement.
Potential Increase in U.S. Exports:	\$5 million
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2014 NATIONAL TRADE ESTIMATE REPORT
TAIWAN

Comments on General Trade Measures (USTR-2013-0027)

Country:	Taiwan
Products:	Nutritional Supplements: Protein Drink Mixes, Powdered Teas, and Herbal Supplements
Classification Numbers:	1806.90.99, 2106.90.20, 2106.90.99 (Nutritional Supplements) 2101.20.00 (Herbal Teas)
Tariff:	Nutritional Supplements – 10% and 30% Herbal Teas – 27.5%

Substantial tariffs on U.S.-sourced nutritional supplements and herbal teas in Taiwan limit Herbalife's growth in this important market.

Potential Increase in U.S. Exports:	Less than \$5 million
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2014 NATIONAL TRADE ESTIMATE REPORT
INDIA

Comments on General Trade Measures (USTR-2013-0027)

Country:	India
Products:	Nutritional Supplements: Food, food supplement & dietetic meal replacement products
Classification Numbers:	1806.90.99, 2106.90.20, 2106.90.99 (Nutritional Supplements)
Trade Barriers:	Pending Regulations Governing Direct Selling in India

Union Government:

Direct selling is a growing industry in India, but in the absence of a clear guideline or regulation for the sector, direct selling is often compared with fraudulent companies operating under the guise of Multi-Level Marketing (MLM). The Prize Chits & Money Circulation Schemes (Banning) Act was promulgated in 1978 to prevent financial fraud and illegal pyramid schemes, and has more recently been applied by some state governments to legitimate direct selling companies. At a Central level, several ministries and departments are working to resolve the issue; however, as the PCMC Act is viewed by some state officials as applicable, the risk of states using it as the basis of legal enforcement involving legitimate direct selling companies remains.

The Indian Direct Selling Association (IDSA) asked the Ministry of Consumer Affairs and the Department of Financial Services to incorporate a clause in a Draft Amendment stating that the PCMC Act is not applicable to direct selling. IDSA believes the Union government needs to promulgate a Central Act or Regulation specifically differentiating legitimate direct selling characteristics from those associated with illegal pyramid schemes.

The Department of Financial Services (DFS), which is spearheading the Inter-Ministerial Group (IMG), has been asked by the Finance Ministry to formalize a draft cabinet note on the proposed amendment of the PCMC Act, 1978, before it is placed in the Parliament during the winter session, which will be convened in early November 2013. Before the draft note is sent to the Cabinet, the DFS will again circulate to the IMG members (i.e. Dept. of Economic Affairs, Ministry of Consumer Affairs, Ministry of Corporate Affairs and Regulators including Reserve Bank of India, SEBI and Department of Revenue) and the IMG will have four weeks to incorporate any additional changes and send back to the DFS.

Herbalife, the Indian Direct Selling Association, the US Direct Selling Association and the World Federation of Direct Selling Associations (WFDSA) are closely monitoring the development of the Union-level regulations.

Government of Rajasthan: In October 2012, the State Government of Rajasthan issued state guidelines on direct selling, some of which are burdensome and would needlessly restrict trade. For example, they require direct selling companies to place the names of their independent distributors on a company website (such requirement is not imposed on any other channel of commerce in India or by any other government in any nation). Also, they prohibit 'payment of incentive by whatever name it is called unrelated to their respective sales volume' which adversely impacts multilevel marketing companies that compensates independent distributors for their sales and marketing support activities.

Need for Clarity in India's Food Safety & Standards Act: Herbalife food products sold in India as Health Supplement, Food for Special Dietary Uses (FSDUs) or Energy Drink Mixes are broadly classified under the category of Proprietary Foods. However, the Authority has yet to notify specific legislations to regulate these products under Section 22 of the Food Safety and Standards Act.

**Potential Increase
in U.S. Exports:**

Less than \$5 million

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2014 NATIONAL TRADE ESTIMATE REPORT
JAPAN

Comments on General Trade Measures (USTR-2013-0027)

Country: Japan

Products: Nutritional Supplements and Cosmetics

Classification Numbers 2106.90, 1512.19, 2101.20, 3304.99, 3305.10, and 3305.90

Market Access Barriers: **SECTORAL REGULATORY REFORM**

Medical Devices and Pharmaceuticals

Nutritional Supplements:

Discriminatory Tariff Treatment: Varied rates of duties are paid on nutritional supplement imports depending on the supplements' main ingredients. A higher duty is paid on nutritional supplement imports containing the same active ingredients as pharmaceuticals.

For example, vitamin supplements classified by Japan as "Food supplement with a basis of vitamins" face a 12.5% duty compared to pharmaceuticals, which pay no duty (0%). Additionally, Glucosamine supplements classified as "Food preparations, Others-others" face a 15% duty compared to pharmaceuticals, which pay no duty (0%).

Potential Increase in U.S. Exports: **\$50 to \$100 million**

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2014 NATIONAL TRADE ESTIMATE REPORT
VIETNAM

Comments on General Trade Measures (USTR-2013-0027)

Country:	Vietnam
Products:	Powdered Teas
Classification Numbers:	2101.20.90 (Herbal Teas)
Tariff:	Herbal Teas – 40%
Market Access Barriers:	IMPORT POLICIES

In the context of the Transpacific Partnership (TPP) agreement negotiations, Vietnam should be urged to provide for immediate duty-elimination of its 40% tariff on herbal teas classified under HS 2101.20.90.

U.S. exports of herbal tea preparations to Vietnam topped \$1 million in 2011, but without a significant reduction of the tariff, Herbalife will likely be forced to shift its sourcing of herbal tea products from the United States to stay competitive. Vietnam gives a tariff preference on herbal teas to China (35%) and ASEAN countries (5%), both of which could be alternate sources. Eliminating Vietnam's tariff will significantly enhance the competitiveness of U.S. herbal teas exported to Vietnam, where Herbalife sees considerable growth potential.

Potential Increase in U.S. Exports:	Less than \$5 million
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2014 NATIONAL TRADE ESTIMATE REPORT
THAILAND

Comments on General Trade Barriers (USTR-2013-0027)

Country: Thailand

Products: Nutritional Supplements: Protein Drink Mixes, Tablets, and Fish Oil Capsules
Herbal Teas
Skin Care products

Classification Numbers: 2106.90, 1517.90, 2101.20, and 3304.99

Market Access Barriers: IMPORT POLICIES

Customs Barriers

Customs Valuation of Fish Oil Capsules Product: The lack of transparency of the Thai customs regime and the significant discretionary authority provided to Thai officials remain a serious concern. Despite Thailand's commitment to fully implement the WTO Customs Valuation Agreement, the Thai Customs Director General retains the authority to arbitrarily increase the customs value of imports. Thai authorities have inconsistently applied the WTO transaction valuation methodology and have repeatedly used arbitrary values. Thai Customs officials have routinely rejected Herbalife's transaction invoice values, insisting that the value of our Fish Oil Capsules product should be higher than the invoice price (about \$1.24) and then increasing it to \$6.33.

Potential Increase in U.S. Exports: \$5 million

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