

Written Submission for the Pre-Budget Consultations in Advance of the 2019 Budget

Submitted by:
Canadian Health Food Association (CHFA)

August 3, 2018



Recommendation 1: That the government re-assess Health Canada priorities to address concerns, and improve competitiveness, within Canada's Natural Health Products (NHPs) industry.

- a. Re-prioritize Health Canada's initiatives to focus on regulatory stability and the enforcement of existing laws to address the greatest risks to human health;
- b. Revise the personal importation policy to respect its original intent by maintaining its use for persons travelling abroad but excluding foreign online purchases; and
- c. Introduce tariffs to foreign online purchases of NHPs, and eliminate the GST applied to licensed domestic NHPs with a Natural Product Number (NPN).

Recommendation 2: That the government create and consult upon a path for the authorization of cannabidiol (CBD) under the existing *Natural Health Product Regulations* in order to harmonize medical access to CBD with the United States while closing loopholes that risk making NHPs the next cannabis black market.



Executive Summary

CHFA is Canada's largest trade association dedicated to natural health and organic products. Our members include manufacturers, retailers, wholesalers, distributors, and importers of natural health and organic products. These can include foods, vitamin and mineral supplements, herbal products, sports nutrition products, health and beauty aids and more.

The natural health and organic product (NHP) sector employs 55,000 Canadians across the country. Over 80 percent of our members are small to medium-sized enterprises (SMEs), and many have worked for generations to support the health, environment, charities, and economy of their local communities. Our members are passionate, grass-root Canadians devoted to a sustainable industry that provides direct support to Canadians looking to make healthy life choices. A recent survey shows that 79% of Canadians rely on NHPs to maintain their healthy lifestyle. Our members are proud to be a trusted source of safe and effective NHPs.

The NHP industry contributes almost \$4 billion to the Canadian economy and direct support to the Canadian health care system. NHPs, amongst other healthy lifestyle choices, are recognized as a factor contributing to reduced risk of chronic disease. The immense burden of chronic disease on our healthcare system is costly. Appropriate supplementation, along with conscious eating and exercise, contribute long-term benefits to Canadians' health and reduce healthcare costs.

Our sector continues to grow in spite of continuous regulatory uncertainty. The constant state of change within federal regulation and policy has led to years of lost investment and sub-optimal growth for entrepreneurs. We know our sector has greater potential for expansion and contribution to positive public health outcomes, but we need help.

Beyond regulatory instability, the Canadian NHP industry is further hindered by a personal importation policy that permits foreign companies to directly market, sell and ship non-compliant products to Canadians. This policy has created a significant threat to the competitiveness of the Canadian NHP industry, as well as the health of Canadians taking these products. A substantial proportion of these sales come from the United States (U.S.). In comparison to Canada, the U.S. has a distinctly different regulatory model that contributes to less expensive health products and wider selections. These selections include the sale of cannabidiol (CBD) as a dietary supplement.

In order for the Canadian NHP sector to maintain its competitive capacity, CHFA is submitting the following recommendations for pre-budget consideration.



Recommendation 1: That the government re-assess Health Canada priorities to address concerns, and improve competitiveness, within Canada's Natural Health Products (NHPs) industry.

The health of all Canadians is of the utmost importance. Our priority is a stable regulatory environment that enables government and industry to address the concerns of greatest risk to Canadians. Businesses and consumers are concerned with the government's ongoing efforts to change the recently implemented *Natural Health Products Regulations* (NHPR), specifically, the introduction of new labelling requirements through the Plain Language Labelling (PLL). These targeted amendments to the NHPR will create a financial burden of up to one billion dollars on our sector, with benefits that remain unclear. Numerous potential risks to the health of Canadians are also anticipated. While we support providing clear information to consumers, there is a gross lack of evidence indicating that the strict requirements of this initiative will prevent the risks Health Canada associates with NHP use.

Health Canada frequently advises Canadians on the risks of adulterated, poor quality, and foreign unauthorized health products bought online. The Import and Export Policy for Health Products allows Canadians returning from abroad to import a 90-day supply of foreign health products so as to not interrupt a course of treatment. This policy has, in practice, become a loophole for purchasing foreign, unauthorized products for personal use. This path to access has been further enabled by trends in e-commerce that allow Canadians to purchase health products from anywhere in the world and have them delivered to their doorstep. The department continues to increase the regulatory burden on the NHP sector, while allowing Canadians to import unauthorized products. This practice directly destabilizes the Canadian NHP industry. Regulatory instability in Canada is driving Canadians to purchase cheaper and potentially riskier foreign products online.

The publication of Health Canada's Operation Pangea highlights the possible dangers of purchasing unlicensed NHPs online¹. Unlike the threat of unlicensed NHPs to consumers, the labelling of existing licensed NHPs has not been identified as a significant risk or cause for concern. The proposed PLL initiative will do nothing to address this ongoing issue of imported products that are clearly, and easily, bypassing the Canadian regulatory system. It will however introduce new risks for patients as well as making business harder and more costly for legitimate Canadian companies.

We recommend reprioritizing the department's focus away from the PLL initiative and towards eliminating unauthorized NHPs. We recommend revising the policy on personal importation and applying tariffs to foreign NHP purchases made online. This strategy will help to maintain and improve the health of Canadians, while also keeping Canadian businesses competitive.

We also recommend eliminating the Goods and Services Tax (GST) on Canadian NHPs. This action will motivate Canadians to purchase licensed NHPs, thereby stimulating the Canadian economy while creating an incentive for consumers to engage in healthy living. The value consumers place on NHPs is evident, but the significance of their role in reducing the burden on Canada's healthcare system is not recognized. It is

¹ Operation Pangea highlights the dangers of buying health products online. [http://healthy Canadains.gc.ca/recall-alert-rappel-avis/hc-sc/2017/64580a-eng.php](http://healthy Canadians.gc.ca/recall-alert-rappel-avis/hc-sc/2017/64580a-eng.php) (accessed: June 20, 2018)



unfitting for health products used by millions of Canadians to bolster their well-being and reduce the burden on our health care system to be taxed in the same way as soft drinks and candy. Most Canadians would be surprised that a dozen donuts are zero-rated, but essential vitamins are not.

CHFA recommends aligning the tax policy with the health policy. Under the NHPR the government has an effective and rigorous authorization process led by Health Canada that could be used to give NHPs the same status in our tax system as prescription drugs.

Our proposal to optimize the competitive capacity of the Canadian NHP industry is to:

- a. Re-prioritize Health Canada's initiatives to focus on regulatory stability and the enforcement of existing laws to address the greatest risks to human health;
- b. Revise the personal importation policy to respect its original intent by maintaining its use for persons travelling abroad but excluding foreign online purchases; and
- c. Introduce tariffs to foreign online purchases of NHPs, and eliminate the GST applied to licensed domestic NHPs with a Natural Product Number (NPN).

Recommendation 2: That the government create and consult upon a path for the authorization of cannabidiol (CBD) under the existing *Natural Health Product Regulations* in order to harmonize access to CBD with the United States, while eliminating loopholes that risk making NHPs the next cannabis black market.

Of the many unique compounds within the cannabis plant, the majority of growing research and public knowledge surrounds two constituents – tetrahydrocannabinol (THC) and cannabidiol (CBD). THC and CBD are phytocannabinoids found in both *Cannabis indica* and *Cannabis sativa* (hemp) – two different species within the genus *Cannabis*. Simply stated, THC is the compound within cannabis accredited for inducing psychoactive effects called a 'high'. In contrast, CBD is a compound in cannabis that is associated with providing a number of health benefits, but no high. Cannabis *indica* contains much higher concentrations of THC than hemp, while hemp contains higher concentrations of CBD and very little THC.

In the present day, Canadians can legally purchase CBD, under the *Access to Cannabis for Medical Purposes Regulations (ACMPR)*. These products are not available in stores, but through mail-order, after obtaining a medical document.

By comparison, the U.S. currently uses enforcement discretion to permit the broad sale of CBD in any retail setting through dietary supplements ('Natural Health Products') as well as cosmetics and pet foods. In addition, the recent *Farm Act*, approved by the U.S. Senate, proposes the de-scheduling of CBD from the U.S. controlled substances list. This action, which could take place around the same time as legalization of recreational cannabis in Canada, will pave the way for continued and lawful authorized sale of CBD in the U.S. In Canada, the opposite is true. The proposed addition of all phytocannabinoids to the Prescription Drug List (PDL) will prevent CBD from being used in NHPs or other commodities.



Canadians have demonstrated broad support for access to cannabis for recreational and therapeutic use. While existing access under the ACMPR has been limited to doctor enabled mail order, the introduction of retail-level recreational access will build expectation that therapeutic options will likewise be more readily accessible. That is, through self-care. This expectation will be further driven by wide-spread enforcement discretion towards cannabis dispensaries in Canada and a rapidly growing, open retail market for CBD in the U.S. Canadian media is already reflecting these attitudes.²

Past differences in the Canada-U.S. NHP-dietary supplement market have led to black markets in Canada for U.S., and other unauthorized products. This has been a long-standing and well-documented challenge for the NHP industry. The risk of Canadians purchasing illegitimate CBD health products in this confused online and in-store retail environment is very high. Creating a Canada-U.S. regulatory disparity for CBD, one of the largest growing NHP markets in the world, will only exacerbate this issue.

CHFA strongly believes that access to recreational cannabis should not be more liberal than access to cannabis products that can improve the health of Canadians.

The risk of Canadians purchasing illegitimate CBD health products, based on this complex online and in-store retail environment is very high. Past differences in the Canada-U.S. NHP-dietary supplement market have led to black markets in Canada for U.S., and other unauthorized products. As noted in Recommendation 1 above, this has been a long-standing and well-documented challenge for the NHP industry.

When black markets capitalize on confusion, it is legitimate Canadian industry who loses both market opportunity and credibility in association with the non-compliant activities. Ultimately, Canadians won't know what risk they're taking.

Our recommendation is for Health Canada to urgently develop a framework that supports the appropriate use of CBD-containing NHPs for self-care. This framework could include the following:

- a. Revision of the PDL; and
- b. Consultation on an appropriate NHP monograph for CBD (cannabis and hemp derived).

² Bradbury, C. (2018, 07, 20). An aching thumb sent me to the cannabis counter. It was one part 1970s LCBO and one part Holt Renfrew. *The Star*. Retrieved from <https://www.thestar.com/news/cannabis/opinion/2018/07/20/i-went-to-the-cannabis-counter-with-an-aching-thumb-it-was-one-part-1970s-lcbo-and-one-part-holt-renfrew.html>

