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September 6, 2018

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VIA ELECTRONIC SUBMISSION

Ambassador Robert E. Lighthizer
U.S. Trade Representative
600 17th Street NW
Washington, DC 20508
www.regulations.gov

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 Ambassador Lighthizer:

We, the Smoke-Free Alternatives Trade Association (SFATA), the American E-Liquid Manufacturing Standards Association (AEMSA), the American Vapor Association (AVA), and SV3, LLC (collectively, the "Coalition"), represented by the law firm of Keller and Heckman, LLP, appreciate the opportunity to respond to the Office of the United States Trade Representative (USTR)'s 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.¹

Our Coalition supports regulation of the vapor products industry based on responsible, science-based and appropriately tailored requirements according to the "continuum of risk" of nicotine products,² that encourages adult consumers looking for reduced-harm alternatives to cigarettes such as vapor products, but restricts access to youth. Our Coalition **does not** support an increase in tariffs on the products produced primarily in China that are vital to our industry and thousands of small U.S. businesses, as well as our country's public health, as acknowledged by the U.S. Food and Drug Administration (FDA) and numerous public health organizations.

¹ See 83 Fed. Reg. 33608 (July 17, 2018); See also Extension of Public Comment Period Concerning Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 38760 (Aug. 7, 2018) (extending comment period to September 6, 2018).

² See David B. Abrams, Allison M. Glasser, Jennifer L. Pearson, *et al.*, *Harm Minimization and Tobacco Control: Reframing Societal Views of Nicotine Use to Rapidly Save Lives*, 39 ANNUAL REVIEW OF PUBLIC HEALTH 193, 193-213 (Apr. 2018), first published as a Review in Advance on Jan. 11, 2018, <https://www.annualreviews.org/doi/abs/10.1146/annurev-publhealth-040617-013849>.

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We request that the USTR remove the Harmonized Tariff Schedule (HTS) subheadings identified in Table 1 (below) from any final list of HTS subheadings promulgated by USTR for increased rates of duty.

Increasing tariffs on products imported from China under the HTS subheadings listed in Table 1 will be neither practicable nor effective in changing China's acts, policies and practices related to technology transfer, intellectual property, and innovation. SFATA, AEMSA, and AVA members, which include hundreds of small and large businesses across the United States, as well as SV3, LLC, a U.S. retailer and distributor of these products with manufacturing operations in China, rely heavily on the sale of e-liquids and vapor products to adults. Any tariff increase on vapor products (*i.e.*, "electronic vaporizing devices," "vapor devices," "Electronic Nicotine Delivery Systems (ENDS)," "ENDS products," "electronic cigarettes," "e-cigarettes," "e-cigs," "vapes," "vaporizers," "vape pens," "hookah pens," "e-pipes," etc.) or components and parts thereof, or items incidental to their sale (*e.g.*, packaging and labeling material, chargers, and batteries, etc.) would cause devastating economic harm to the Coalition's U.S. member companies, small- to medium-sized businesses, and consumers of such products across the country, and would severely impact public health in the United States.

Table 1: Relevant HTS Codes³

HTS Code	Product Description
8543.90.88.50	Personal electric or electronic vaporizing devices with substances containing nicotine.
8543.90.88.60	Other personal electric or electronic vaporizing devices.
2403.19.20.20	Mixture containing tobacco mixed with glycerol or other ingredients
2905.31.00.00	Ethylene Glycol (without nicotine or flavoring added)
2905.32.00.00	Propylene Glycol (without nicotine or flavoring added)
3824.99.92.80	Mixtures of a kind containing nicotine used in personal electric or electronic vaporizing devices
3923.30.00.00	Carboys, bottles, flasks and similar articles for the conveyance or packing of goods, of plastics.
8504.40.95.80	USB Charger
4202.92.00.00	Product with outer surface of sheeting of plastics or of textile materials
4819.20.00.00	Folding cartons, boxes and cases of non-corrugated paper or paperboard.
4821.10.00.00	Printed paper and paperboard labels of all kinds
8506.10.00	Manganese dioxide primary cells and primary batteries

³ USTR has already imposed additional tariffs on personal electronic vaporizing devices imported under HTS subheading 8543.70.99 including, in particular, 8543.70.99.30, 8543.70.99.40, and 8543.70.99.90 (Final Second Tranche, August 7, 2018). Although not the subject of this docket, we respectfully note our opposition to such action and urge USTR to reconsider and remove these subheadings from its Final Second Tranche. Raising tariffs on vapor products imported under these subheadings will have the same devastating impact on U.S. businesses, consumers and public health as described herein.

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HTS Code	Product Description
8506.30.10	Mercuric oxide primary cells and primary batteries having an external volume not exceeding 300 cubic cm.
8506.80.00	Primary cells and primary batteries, nesoi.
8507.40.80	Nickel-iron storage batteries, other than of a kind used as the primary source of power for electric vehicles.
8507.50.00	Nickel-metal hydride batteries.

I. Our Coalition

Our member firms are located across the U.S. and contribute to the manufacture, import, distribution, and/or sale of vapor products. Please see below for a brief overview of our Coalition.

a. Smoke-Free Alternatives Trade Association (SFATA)

SFATA, a 501(c)(6) organization, is a national trade association of businesses that work in, or in service of, the vapor products industry, including manufacturers, distributors and retailers (www.sfata.org). SFATA's mission is to advocate for a reasonably regulated U.S. marketplace which allows its member companies to provide smoke-free products to adult consumers, while promoting a positive public image for vapor products and educating businesses in our industry.

b. American E-Liquid Manufacturing Standards Association (AEMSA)

AEMSA is the first and only trade association of manufacturers dedicated to creating responsible and sustainable standards for the manufacturing of e-liquids used in vapor products, e-liquid components, vapor hardware devices, as well as distribution and retail standards and best practices (www.aemsa.org). AEMSA is an all-volunteer 501(c)(6) organization, formed to promote safety and responsibility in the vapor products industry through self-regulation. One of AEMSA's primary goals is to provide consumers and government regulators confidence that its members' products are manufactured in a professionally responsible and safe manner until the FDA promulgates good manufacturing practices for these products.

c. American Vaping Association (AVA)

AVA is a nonprofit organization that advocates for policies that encourage adult smokers to switch to reduced risk nicotine products like vapor products (<https://vaping.org/>). AVA's sponsors consist of vapor companies that manufacture, distribute and sell e-liquids and vapor devices.

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d. SV3, LLC (SV3)

SV3 is an American-based importer, retailer and distributor of e-liquids and vapor products, including devices and components and parts that are manufactured in China. SV3 is one of the oldest American vapor companies, and has several retail locations in Arizona.

Together, we represent thousands of organizations involved in the commerce of vapor products, including e-liquids and other related components and parts that provide U.S. consumers safer alternatives to traditional combustible cigarettes. Our member firms support the Trump administration's objective to address imbalances in China's trading policies and practices that adversely impact U.S. businesses. We agree that compulsory technology transfers and intellectual property theft are significant issues. However, we do not believe that increasing tariffs on the HTS subheadings listed in Table 1 will achieve the administration's stated objectives.

The proposed "solution" of increasing tariffs on products from China critical to the U.S. vapor products industry will cause irreparable harm to small businesses and millions of consumers of these products across the country, the vast majority of whom are former cigarette smokers. As explained below, our industry already contends with significant regulatory burdens. Increasing tariffs on items for which we have no alternative suppliers outside of China threatens to wipe-out our nascent industry with serious consequences for public health in the United States.

II. Adverse Economic Impacts

a. Our Industry Depends on the Success of New Small Businesses

The vapor products industry represents a burgeoning sector of the U.S. economy, having grown from a \$1.5 billion to a \$5.5 billion industry from 2014 – 2018.⁴ ⁵ Sales of vapor devices in the U.S. increased 68% to more than \$1.7 billion in the 12 months through June 2018—after already rising 32% in 2017.⁶ A recent analysis by Herzog and Kanada with Wells Fargo Securities placed vapor products retail sales at nearly \$2 billion with unit volumes sold at 17.2

⁴ *Electronic Cigarettes (E-Cigarettes) Dollar Sales in the United States From 2014 to 2018 (in Billion U.S. Dollars)*, STATISTA, <https://www.statista.com/statistics/285143/us-e-cigarettes-dollar-sales/>.

⁵ Bonnie Herzog and Patty Kanada, *Nielsen: Tobacco All Channel Data Thru 6/16*, WELLS FARGO SECURITIES, (Jun. 26, 2018).

⁶ Mark Niquette and Matthew Townsend, *Vaping Industry Decries Trump's Tariffs Targeting E-Cigarettes*, BLOOMBERG, (July 20, 2018), <https://www.bloomberg.com/news/articles/2018-07-20/vaping-industry-decries-trump-s-tariffs-targeting-e-cigarettes>.

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million (as of June 16, 2018).⁷ As illustrated in Figures 1 and 2 (below), our industry's growth has more than doubled since 2015.⁸ In 2017, North America became the largest vapor product market in the world.⁹

Our industry has experienced incredible growth, but is still very new and heavily reliant on small businesses.¹⁰ Survey data gathered from our member firms demonstrates that 60% of our respondents have been in business for less than 5 years. Overwhelmingly, these are small businesses that serve their communities. Approximately 95% of our respondents employ less than 100 individuals. Over the prior three fiscal years, 80%-90% generated less than \$2.5 million in gross revenues annually. Over the same period of time, 44%-63% of our respondents generated less than \$500,000 in gross revenues annually. Data gathered by Management Science Associates (MSA) from a Vape Shop Owner Survey conducted from August 2017 to January 2018 demonstrates that vape shops have generally been in business for 3 to 5 years.¹¹ Over 60% of MSA survey respondents reported being single-store operators.¹² On average, MSA survey respondents reported generating approximately \$583,200 in annual revenues.¹³ A survey conducted by ECigIntelligence (ECI) in conjunction with SFATA between December 20, 2016 and February 13, 2017 shows that vape stores are spread throughout the country, with a salient presence in western states (Figure 3).¹⁴ Approximately 67% of ECI survey respondents reported being single-store operators. A majority of ECI survey respondents generated \$360,000 or less

⁷ Bonnie Herzog and Patty Kanada, *Nielsen: Tobacco All Channel Data Thru 6/16*, WELLS FARGO SECURITIES, (Jun. 26, 2018).

⁸ Bonnie Herzog and Patty Kanada, *Nielsen: Tobacco All Channel Data Thru 6/16*, WELLS FARGO SECURITIES, (Jun. 26, 2018).

⁹ Research and Markets, *Global Vapor Products Market Outlook and Forecast 2018-2023: Market and is Expected to Cross \$43 Billion by 2023*, PR NEWswire, (Jan. 29, 2018), <https://www.prnewswire.com/news-releases/global-vapor-products-market-outlook-and-forecast-2018-2023-market-and-is-expected-to-cross-43-billion-by-2023-300589389.html>.

¹⁰ Smoke-Free Alternatives Trade Association (SFATA), *U.S. Vape Shops Average \$26K In Monthly Sales, According To Industry Index*, PR NEWswire, (Dec. 16, 2015), <https://www.prnewswire.com/news-releases/us-vape-shops-average-26k-in-monthly-sales-according-to-industry-index-300193463.html>.

¹¹ *Vape Shop Owner Survey 2017*, MANAGEMENT SCIENCE ASSOCIATES, INC., (Jan. 2018).

¹² *Id.*

¹³ *Id.*

¹⁴ *ECigIntelligence U.S. Vape Store Survey*, ECIGINTELLIGENCE (Feb. 23, 2017), www.ECigIntelligence.com.

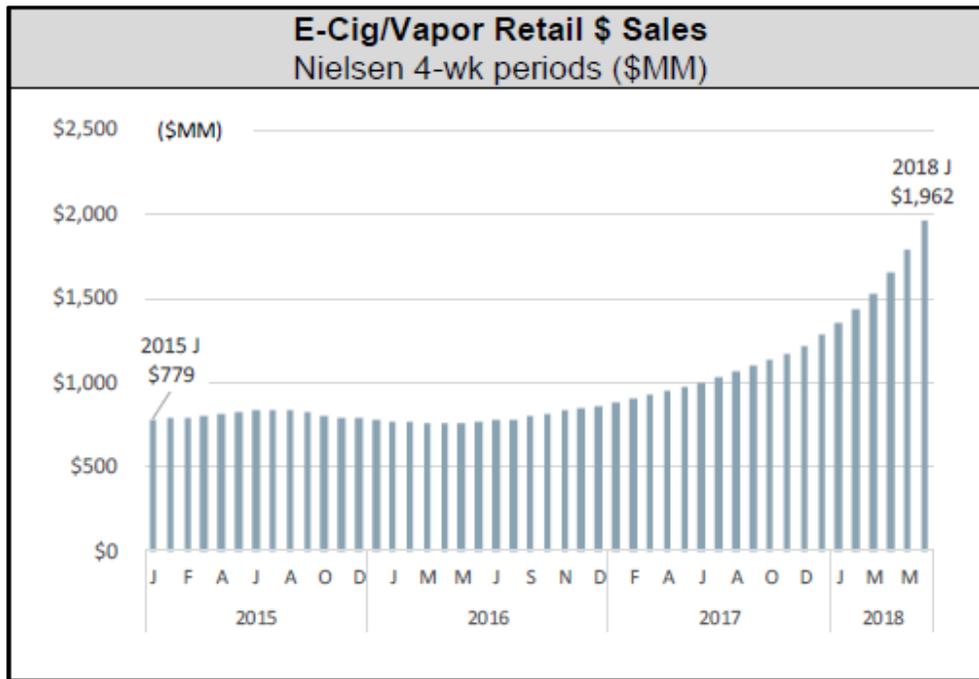
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in annual revenues.¹⁵ Data from all three surveys indicates that the overwhelming majority of vapor products industry participants are small businesses and generate between \$100,000 and \$600,000 in annual revenues.

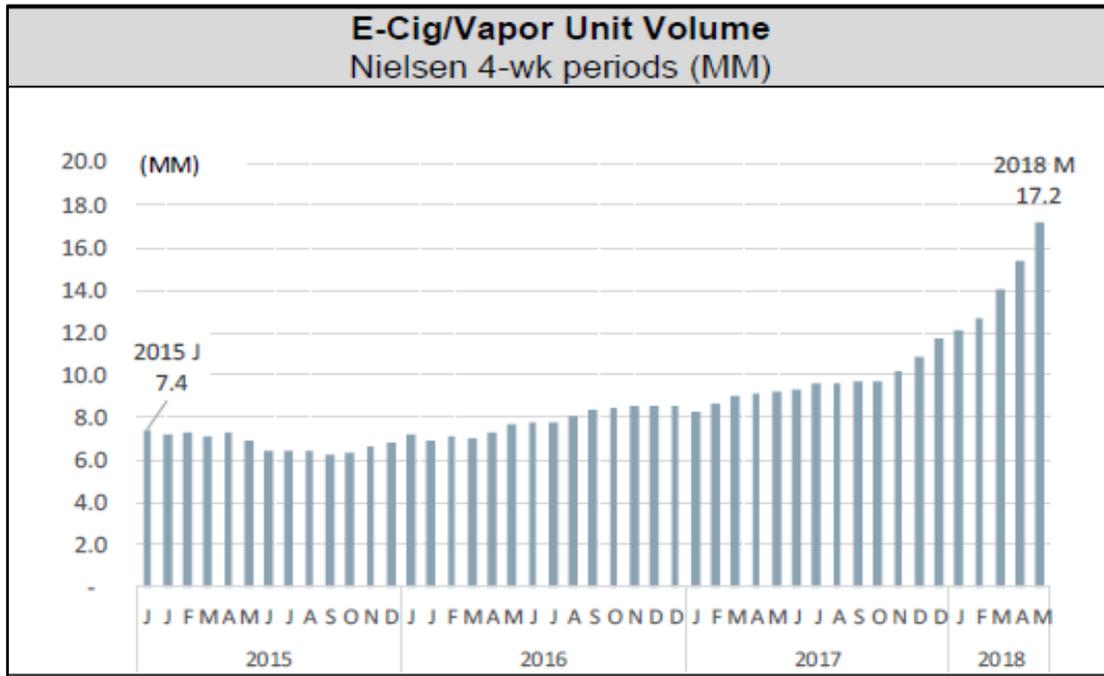
Figure 1: Growth in Vapor Retail Sales¹⁶



¹⁵ *Id.*

¹⁶ Bonnie Herzog and Patty Kanada, *Nielsen: Tobacco All Channel Data Thru 6/16*, WELLS FARGO SECURITIES, (Jun. 26, 2018).

Figure 2: Growth in Vapor Retail Unit Volumes Sold¹⁷



Indeed, small business owners across the United States make up the backbone of the vapor products industry. According to Yelp data on registered businesses, there are over 10,000 vape shops across the country.¹⁸ There are 2.7 vape shops for every bowling alley in the U.S.¹⁹ The industry serves adult consumers in all U.S. states, and holds a particularly commanding retail presence in Nevada, Hawaii, Oklahoma, Florida, and California.²⁰ Mom and pop vape shops reach consumers across the country through brick and mortar operations and online sales. Nearly 70% of ECI survey respondents reported sales through only brick and mortar operations in 2017, while just over 30% also sold online. The majority of these businesses make and sell

¹⁷ *Id.*

¹⁸ Smoke-Free Alternatives Trade Association (SFATA), *U.S. Vape Shops Average \$26K In Monthly Sales, According To Industry Index*, PR NEWSWIRE, (Dec. 16, 2015), <https://www.prnewswire.com/news-releases/us-vape-shops-average-26k-in-monthly-sales-according-to-industry-index-300193463.html>.

¹⁹ Christopher Groskopf, *What Yelp Data Reveal About the Sudden Rise of Vape Shops in America*, QUARTZ, (Feb. 10, 2016), <https://qz.com/608469/what-yelp-data-tells-us-about-vaping/>.

²⁰ *Id.*

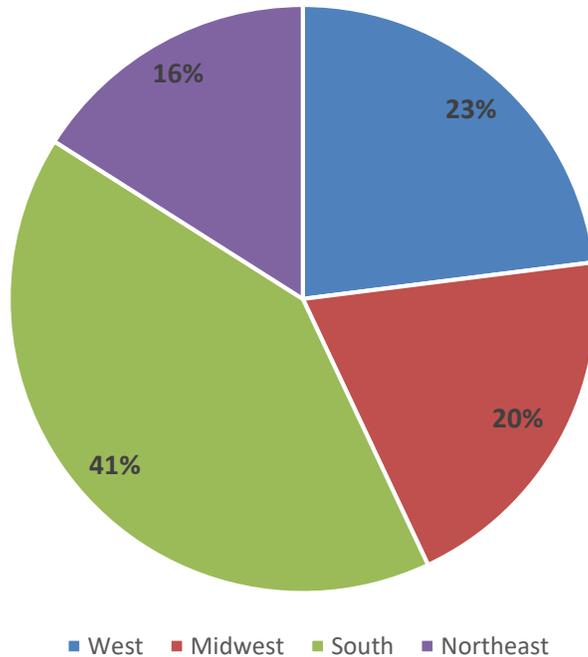
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their own e-liquids, generating 62% of total sales in 2017 (Figure 4).²¹ Vapor shops and convenience stores/other retail outlets contributed the largest share of U.S. vapor products revenues last year (Figure 5).²²

Figure 3: Geographic Distribution of ECI Survey Respondents²³



²¹ *ECigIntelligence U.S. Vape Store Survey*, ECIGINTELLIGENCE (Feb. 23, 2017), www.ECigIntelligence.com.

²² Bonnie Herzog and Patty Kanada, *Nielsen: Tobacco All Channel Data Thru 6/16*, WELLS FARGO SECURITIES, (Jun. 26, 2018).

²³ *ECigIntelligence U.S. Vape Store Survey*, ECIGINTELLIGENCE (Feb. 23, 2017), www.ECigIntelligence.com.

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Figure 4: Percentage Sales by Product Type for ECI Respondents²⁴

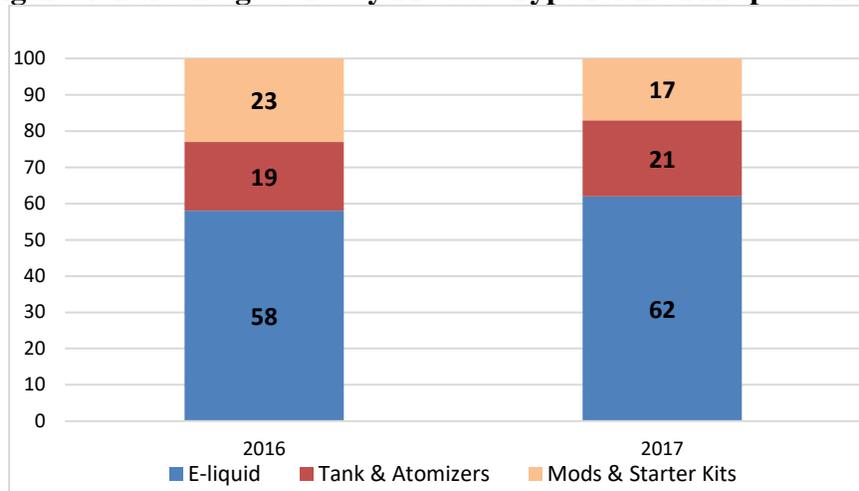


Figure 5: Industry Revenues by Product and Channel²⁵



²⁴ *ECigIntelligence U.S. Vape Store Survey*, ECIGINTELLIGENCE (Feb. 23, 2017), www.ECigIntelligence.com.

²⁵ Bonnie Herzog and Patty Kanada, *Nielsen: Tobacco All Channel Data Thru 6/16*, WELLS FARGO SECURITIES, (Jun. 26, 2018).

b. China is Our Sole Source for Vapor Hardware Products

Over the preceding three fiscal years, 50%-64% of our survey respondents earned more than half of their revenues from sales involving vapor products. While e-liquids used in vapor products are produced by hundreds of U.S. manufacturers, the industry, including the Coalition's U.S. member firms, critically depends on vapor product imports (devices and other hardware components) from China that are required to vape e-liquids. These imports are subject to the USTR's proposed 10-25% tariff increase (Table 1). To compete in this expanding, innovative market, our member firms depend on established, integrated supply chains to source dependable, cost-effective products. There are currently *no* alternative suppliers for these vapor devices outside of China (and no U.S.-based manufacturers). Accordingly, China is the vital trading partner in our member firms' supply chains due, in part, to its role in the creation of the first e-cigarette and the economies of scale at play in its manufacturing hub in Shenzhen.²⁶ At present, the U.S. and other countries simply cannot supply the high volume of quality, low-cost vapor products devices, parts and components, and incidental items required to meet demand. Moreover, as we discuss below, new FDA regulations effectively prevent U.S. companies from setting up shop domestically to produce vapor devices, as such products would require first obtaining FDA authorization through the onerous Premarket Tobacco Product Application (PMTA) process – which no vapor company has been able to successfully complete yet – before entering the market.

Figure 6 illustrates a typical vaporizer and its component parts. Vapor products have an electric heating element (an atomizer or cartomizer) to vaporize a liquid solution. Solutions (also called e-liquid) usually contain a mixture of propylene glycol and/or vegetable glycerin (which act as solvents and increase the flavor and vapor), nicotine, and flavorings. Some e-liquids provide flavored vapor without nicotine. Vapor products can include a variety of components, such as the following:²⁷

- E-liquids
- A glass or plastic vial container of e-liquid
- Cartridges
- Atomizers
- Batteries
- Cartomizers and clearomizers

²⁶ Mark Niquette and Matthew Townsend, *Vaping Industry Decries Trump's Tariffs Targeting E-Cigarettes*, BLOOMBERG, (July 20, 2018), <https://www.bloomberg.com/news/articles/2018-07-20/vaping-industry-decries-trump-s-tariffs-targeting-e-cigarettes>.

²⁷ U.S. Food & Drug Admin., *Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS)*, last modified July 20, 2018, <https://www.fda.gov/tobaccoproducts/labeling/productsingredientscomponents/ucm456610.htm>.

- Digital display or lights to adjust settings
- Tank systems
- Drip tips
- Flavorings for e-liquids
- Programmable software

When asked to rate the importance of vapor products parts and components, MSA survey respondents overwhelmingly indicated that most are extremely important to their businesses (Figure 7).²⁸

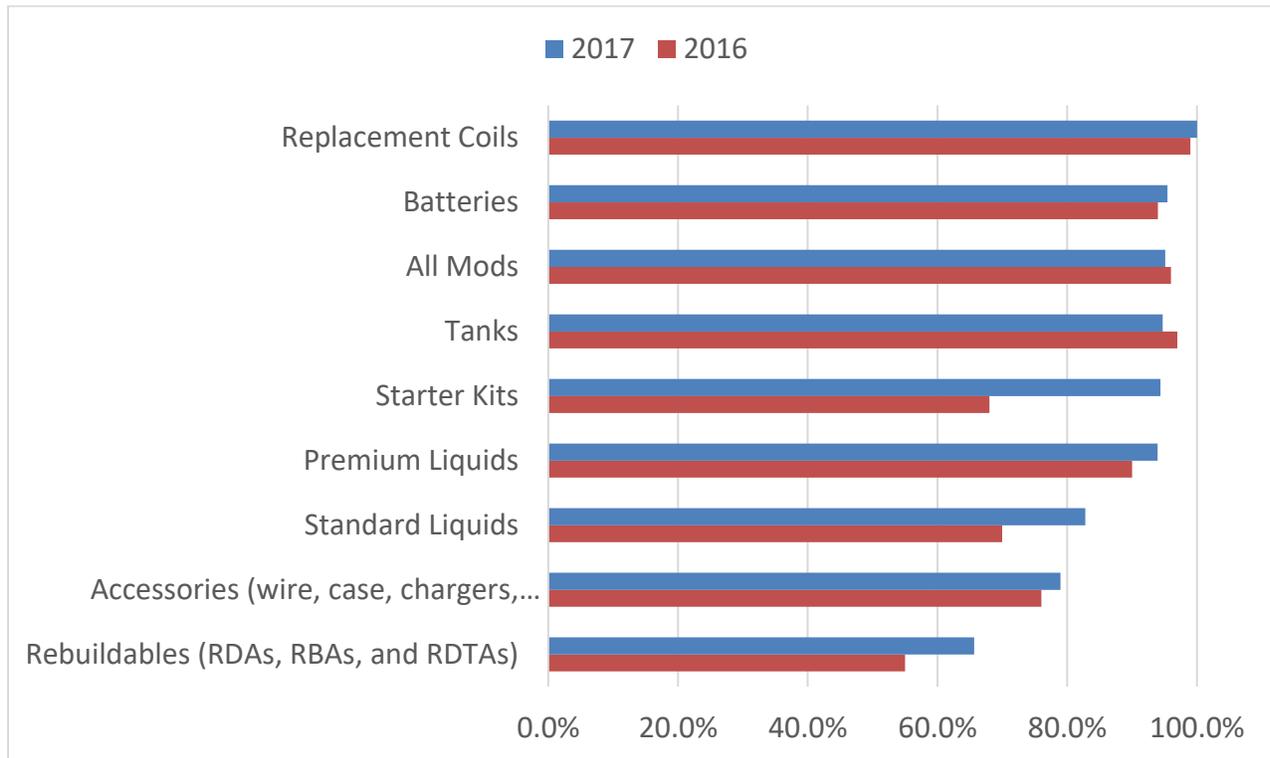
Figure 6: Anatomy of a Vaporizer²⁹



²⁸ Vape Shop Owner Survey 2017, MANAGEMENT SCIENCE ASSOCIATES, INC., (Jan. 2018).

²⁹ Matchless, *What is an Electronic Cigarette?*, <https://www.matchlessecig.co.uk/info/vapeencyclopedia/what-is-an-electronic-cigarette>.

Figure 7: Percent of Respondents that View Given Product Category as “Extremely Important”³⁰



To understand the full impact of tariffs on such products from China, it is imperative to discuss the country’s role in the industry. China is the sole source for most of the items discussed above for three major reasons. First, Beijing pharmacist Han Li, a co-founder of Ruyan, the world’s first vapor products company, invented the first electronic cigarette in 2003. Since then, Chinese businesses have established a manufacturing base in the Shenzhen region that accounts for nine-tenths of global production.³¹ China’s innovation on this front has not been matched by any other market. In fact, the U.S. was first introduced to vapor products in the mid-2000s, and additional brands did not penetrate the U.S. market until 2010.³² Even by 2016, vapor

³⁰ *Vape Shop Owner Survey 2017*, MANAGEMENT SCIENCE ASSOCIATES, INC., (Jan. 2018).

³¹ Joshua Bateman, *Puff, Puff, Recharge. E-cigarettes are Booming, and China is Ground Zero*, DIGITAL TRENDS, (Oct. 3, 2017), <https://www.digitaltrends.com/features/china-is-leading-the-e-cigarette-revolution/>.

³² U.S. Dep’t of Health and Human Servs., Ctrs. for Disease Control & Prevention, *2016 Surgeon General’s Report: E-Cigarette Use Among Youth and Young Adults*, Chapter 1: Introduction, Conclusions, and Historical

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products imports from China accounted for at least 98% of customs value for devices with nicotine and parts with or without nicotine, according to the U.S. GAO.³³

Second, China controls half of the world's lithium production, a critical component of battery technology, through the corporation Tianqi Lithium.³⁴ The organization paid more than \$4 billion in 2018 to become the second-largest shareholder in Sociedad Química y Minera (SQM), a Chilean mining company. The deal gives the company effective control over nearly half the current global production of lithium, a critical component in battery technology.³⁵

Finally, the federal legislation and FDA's implementing regulations make it impossible for a vapor company to now start producing vapor devices in the United States. As discussed below, this is because American companies are effectively prohibited from introducing their own, U.S.-made vapor devices into the U.S. market if those *exact* products were either not grandfathered (*i.e.*, on the U.S. market as of February 15, 2007) and exempt from premarket review, or subject to FDA's compliance policy for deemed tobacco products that allows vapor products that were already on the market as of August 8, 2016, the effective date of FDA's "Deeming Rule" (which extended the Agency's tobacco authority to newly deemed tobacco products, including most vapor products) to remain on the market for a certain period time until premarket applications are due.³⁶ Today, such new product (or even an existing pre-August 8, 2016 product modified in any way³⁷) would require first obtaining FDA authorization through the PMTA process, which costs millions of dollars per application and is expected to take several

Background Relative to E-Cigarettes, at 10, available at https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_SGR_Chap_1_508.pdf.

³³ David Gootnick, *Electronic Cigarettes: U.S. Imports in 2016*, U.S. GOV'T ACCOUNTABILITY OFFICE, (Apr. 24, 2017), <https://www.gao.gov/assets/690/684227.pdf>.

³⁴ Akshat Rathi, *One Chinese Company Now Controls Most of the Metal Needed to Make the World's Advanced Batteries*, QUARTZ, (May 30, 2018), <https://qz.com/1292202/china-now-effectively-controls-half-the-worlds-lithium-production/>.

³⁵ *Id.*

³⁶ Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products, 81 Fed. Reg. 28974 (May 10, 2016) (hereinafter, the "Deeming Rule").

³⁷ Even if an American company were to start producing vapor devices domestically that were exact duplicates of Chinese-made products on the market on August 8, 2016, notwithstanding any intellectual property concerns, such products would likely still be considered by FDA to be new products that require up-front PMTA authorization because of the use of different materials, components, suppliers, etc. compared to the Chinese products.

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years to complete.³⁸ In short, there is simply no legal way to introduce to the U.S. market new non-Chinese sources of the specific vapor product categories impacted by the HTS codes in Table 1 above.

c. A Tariff Hike Will Increase Already Heavy Burdens on Small Business

Despite growth opportunities, the barriers to profitability in the vapor products industry are high. Organizations must comply with stringent U.S. regulations that disproportionately burden small and medium-size businesses that lack the adaptability and resources of larger competitors.

In 2016, FDA finalized the Deeming Rule extending its regulatory authority over tobacco products pursuant to the Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act, to all products that meet the definition of a “tobacco product” including vapor products that use e-liquids that contain tobacco-derived nicotine, and components and parts thereof. Now, such vapor products are subject to numerous regulatory requirements, including, among other things:

- Adulteration and misbranding prohibitions;
- U.S. establishment registration and product listing requirements for manufacturing facilities located in the United States³⁹;
- Ingredient and health document submissions;
- Testing for Harmful and Potentially Harmful Constituents (HPHCs);
- A ban on unauthorized modified or reduced-risk claims; and, most significantly,
- Premarket authorization for any new products first marketed or modified after the February 15, 2007 “grandfather date”.

The Deeming Rule also imposes bans on free sample distribution, minimum age restrictions on sales, and requirements to include nicotine addiction warnings on product labels and in advertisements. These requirements apply to both large and small companies: a small vape shop

³⁸ Deeming Rule, 81 Fed. Reg. at 28990.

³⁹ Of note, this requirement does not currently apply to foreign establishments, including China-based vapor product manufacturers. Foreign establishments are not required to register and list until FDA issues regulations establishing such requirements in accordance with section 905(h) of the FDCA (21 U.S.C. § 387c(h)). *See also* U.S. Food & Drug Admin., Guidance for Industry: *Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments* (Revised*) (Dec. 2017), at n.2, <https://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM191940.pdf>.

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owner who only mixes or prepares e-liquids, for example, must meet the same regulatory demands of a large-scale tobacco manufacturer.⁴⁰

While the Coalition supports appropriate and tailored regulation that permits adult – but restricts youth – access to vapor products, it is the premarket authorization process for new products that not only will put thousands of small and medium sized vapor products entrepreneurs out of business, but is also what prevents American companies from otherwise producing vapor devices in the United States – forcing the entire industry to rely on Chinese products.⁴¹

Because there are no known grandfathered vapor products, the entire industry, *i.e.*, all vapor products on the market, is required to obtain premarket authorization from FDA.⁴² In the Deeming Rule, however, FDA signaled its desire to support the U.S. vapor products industry and proposed a “compliance policy” that would delay enforcement of the premarket authorization requirements for vapor products already on the market when the rule went into effect on August 8, 2016. Specifically, the Deeming Rule initially established an August 8, 2018 PMTA filing deadline for vapor products on the market as of August 8, 2016.⁴³ But more recently, the Trump administration appointed FDA Commissioner, Dr. Scott Gottlieb, announced the Agency’s new “Comprehensive Plan for Tobacco and Nicotine Regulation.”⁴⁴ As part of that plan, FDA extended the PMTA cutoff to August 8, 2022, and will allow vapor products already

⁴⁰ See U.S. Food & Drug Admin., *Tobacco Products: Manufacturing*, last modified Aug. 9, 2018, <https://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/Manufacturing/default.htm>; See also Deeming Rule, 81 Fed. Reg. at 28990.

⁴¹ Susan Adams, *Can E-Cigarettes Survive The War Against Vaping?*, FORBES, (May 6, 2016), <https://www.forbes.com/sites/susanadams/2016/05/05/can-e-cigarettes-survive-the-war-against-vaping/#6f22db6a4cd0>.

⁴² The fact that there are no grandfathered products also means that new vapor products are ineligible for the premarket authorization pathways designed to be less burdensome than the PMTA; *i.e.*, the Substantial Equivalence (SE) Report and SE Exemption pathways. Each of these processes require comparison to a grandfathered product (or a predicate product previously found to be substantially equivalent). 21 U.S.C. § 387j.

⁴³ Deeming Rule, 81 Fed. Reg. at 28978.

⁴⁴ U.S. Food and Drug Admin. News Release, *FDA Announces Comprehensive Regulatory Plan to Shift Trajectory of Tobacco-Related Disease and Death* (July 28, 2017), <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm568923.htm>.

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on the market to continue to be marketed until then (after that date a product can remain on the market if it is subject to a PMTA that has been accepted by FDA for scientific review).⁴⁵

But as noted above, any new non-grandfathered vapor product, or change to an existing product, introduced after August 8, 2016, must *first* obtain a PMTA order, thus freezing the market for vapor products as of that date.⁴⁶ Accordingly, vapor technology is not sensitive technology which implicates security issues, because, as a result of the FDA regulatory scheme, the vapor products sold in the United States are necessarily outdated (*i.e.*, the devices are circa August 8, 2016). Due to FDA's restrictions on new products, U.S. companies are effectively barred from competing with Chinese manufacturers, who invented the technology in the first instance. As such, there is currently no existing U.S. manufacturing alternative for the U.S. vaping industry to obtain such devices and virtually no likelihood that one will develop in the future.

While our member firms support thoughtful regulation to maintain the quality of their products and intended use for adults, requirements such as the aforesaid rule disproportionately impact small and medium-size organizations. Though larger businesses may be poised to divert resources to hire internal or external compliance teams, small shops are not equipped to deal with the burdens of these regulations.

In the coming years, FDA requirements will continue to hamper the growth of vapor products entrepreneurs. The PMTA process could cost a vapor products manufacturer that offers 500 types of e-liquids, vaporizers, and e-cig accessories \$175 million to \$1 billion to comply. While the FDA estimates that the process will cost \$330,000 per product, industry estimations land at around \$2 million per item.⁴⁷ Indeed, MSA survey respondents typically offer 500 unique stock keeping units (SKUs) across all product categories, including parts and

⁴⁵ See U.S. Food and Drug Admin., Guidance for Industry: *Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule* (Revised)* (Aug. 2018), at 3 and 9, <https://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM557716.pdf>.

⁴⁶ Deeming Rule, 81 Fed. Reg. 29011, at n.13.

⁴⁷ Adams, *Can E-Cigarettes Survive The War Against Vaping?*, *supra* n. 26. The high cost to obtain PMTA authorization is because the legal standard requires a manufacturer to demonstrate that new product is "appropriate for the protection of the public health." This "public health" standard requires assessing the product's impact on the population as a whole, including the impact the new product will have on the likelihood that people will stop using tobacco products (*i.e.*, cessation), as well as start using them (*i.e.*, initiation) (21 U.S.C. § 387j(c)). The FDA has recommended a vast array of data be developed to meet this standard, including non-clinical, clinical (*i.e.*, human), and long-term studies. See FDA's Draft Guidance on PMTAs for Electronic Nicotine Delivery Systems (May 2016), available at: <https://www.fda.gov/downloads/tobaccoproducts/labeling/rulesregulationsguidance/ucm499352.pdf>.

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components.⁴⁸ These items are integral to the functioning and profitability of a vapor products business. Approximately 75% of ECI respondents viewed existing or future regulation as harmful to their business.⁴⁹

Together, the factors noted above make China the only viable source for our U.S. member firms. With established innovation, intellectual property, manufacturing, and supply chains to service the vapor products industry, China is the only country equipped to handle our member firms' sourcing needs. Moreover, China's dominant production of vapor products means that sourcing these items from new vendors in other countries would take substantial time and resources, as well as lengthy and expensive regulatory reviews. Other countries are simply not equipped to supply over two-fifths of the world's vapor products in a timely fashion.⁵⁰ Our member firms simply do not have the ability to switch to alternative suppliers from other countries to avoid the effects of a tariff hike.

d. A Tariff Hike Will Destroy U.S. Small Business Profitability and Competitiveness

With no alternative sourcing options, our member firms will be forced to either absorb the increased tariff burden or pass along the additional costs to consumers. Approximately 97% of our respondents indicated that a 25% tariff would lead to both 25% higher business expenses and a concomitant increase in prices that consumers will ultimately have to pay. Given the existing regulatory challenges our industry faces and the razor thin profit margins for most small businesses in our industry, even small increases in the cost to obtain products will result in lost jobs and bankruptcy if consumers decide to decrease or cease using vapor products. Nearly 90% of our respondents expect their businesses **cannot** remain profitable with an additional 25% tariff imposed on vapor products. We strongly urge the USTR to consider the economic ramifications of imposing tariffs on an expanding yet fragile sector of the U.S. economy. However, a tariff hike will pose significant public health challenges as well.

The incredible success of our nascent industry reflects a simple and powerful choice that U.S. consumers are making: they want to live healthier lives. Our industry serves a growing number of consumers who are rejecting traditional, combustible cigarettes in favor of less

⁴⁸ *Vape Shop Owner Survey 2017*, MANAGEMENT SCIENCE ASSOCIATES, INC., (Jan. 2018).

⁴⁹ *ECigIntelligence U.S. Vape Store Survey*, ECIGINTELLIGENCE (Feb. 23, 2017), www.ECigIntelligence.com.

⁵⁰ Allied Market Research, *Global Electronic Cigarette Market Expected to Reach \$26,839 Million by 2023* - Allied Market Research, PR NEWswire, (Feb. 1, 2018), <https://www.prnewswire.com/news-releases/global-electronic-cigarette-market-expected-to-reach-26839-million-by-2023---allied-market-research-672154333.html>.

harmful alternatives. American consumers are using their purchasing power to show that less harmful alternatives to combustible cigarettes are appealing. However, if the USTR does not exclude the HTS subheadings noted above from its tariff hike, the subsequent rise in business expenses will force small and mid-size companies, already struggling to comply with stringent U.S. regulations, to effectively close their doors, or pass along costs to consumers. Consumers who face increased prices are likely to decrease or cease their use of vapor products and may resort to more harmful alternatives. This would be a disaster for public health in the United States.

III. Adverse Public Health Impacts

a. FDA, Regulatory Bodies, and Public Health Organizations Acknowledge that ENDS Are Less Harmful Than Combustible Tobacco Cigarettes

A large and growing body of scientific evidence demonstrates that vapor products are far less risky than tobacco-containing cigarettes because e-liquids do not contain tobacco nor are they combusted or burned in the device. The National Academies of Sciences, Engineering, and Medicine (NASEM)⁵¹, Public Health England (PHE)⁵² (a department of the British Government), and the Royal College of Physicians⁵³, among many other public health advocates and scientists, have repeatedly concluded that vapor products present significantly less health risk than combustible cigarettes.

⁵¹ National Academies of Science, Engineering and Medicine: Committee on the Review of the Health Effects of Electronic Nicotine Delivery Systems, *THE PUBLIC HEALTH CONSEQUENCES OF E-CIGARETTES* (eds. Kathleen Stratton *et al.*, 2018), available at <https://www.nap.edu/catalog/24952/public-health-consequences-of-e-cigarettes> (hereinafter, the “NASEM Report”). The Report, which was the result of the Committee’s review of over 800 articles identified from a massive literature search of six different databases, noted that the Committee found sufficient literature to suggest that, “while there are risks associated with e-cigarettes, compared with combustible tobacco cigarettes, e-cigarettes contain fewer toxicants; can deliver nicotine in a manner similar to combustible tobacco cigarettes; show significantly less biological activity in a number of in vitro, animal, and human systems; and might be useful as a cessation aid in smokers who use e-cigarettes exclusively.” *Id.* at 15-16. In sum, the Report acknowledges that vaping is significantly less harmful than smoking traditional combustible tobacco cigarettes.

⁵² Public Health England, *EVIDENCE REVIEW OF E-CIGARETTES AND HEATED TOBACCO PRODUCTS 2018*, available at <https://tinyurl.com/ycake739>.

⁵³ Tobacco Advisory Group of the Royal College of Physicians, *NICOTINE WITHOUT SMOKE: TOBACCO HARM REDUCTION* (2016), available at <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>.

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For example, PHE recently issued a report confirming its earlier findings that switching completely from smoking to vaping results in substantial health benefits.⁵⁴ Similarly, the Tobacco Advisory Group of the Royal College of Physicians concluded that “the available data suggest” that the long-term health risks associated with e-cigarettes “are unlikely to exceed 5% of those associated with smoked tobacco products, and may well be substantially lower than this figure” (*i.e.*, e-cigarettes are around 95% safer than smoking).⁵⁵ What is more, PHE has declared that “[t]his appears to remain a reasonable estimate.”⁵⁶ Moreover, FDA Commissioner Dr. Scott Gottlieb, has explained that FDA believes “fully transitioning smokers to [ENDS] can reduce the morbidity and mortality associated with tobacco use.”⁵⁷ In addition, both FDA and Dr. Gottlieb have repeatedly made similar points regarding the reduced risk of vapor products in the past.⁵⁸ This position is supported by the conclusions reached by the NASEM Committee on the Review of the Health Effects of Electronic Nicotine Delivery Systems (ENDS) (the “Committee”) in its report, “Public Health Consequences of E-Cigarettes” (the “NASEM Report”).⁵⁹ Among other things, the Committee’s NASEM Report acknowledges that the “current evidence points to e-cigarettes being less harmful than combustible tobacco cigarettes.”⁶⁰ Further, it states that

⁵⁴ Public Health England, EVIDENCE REVIEW OF E-CIGARETTES AND HEATED TOBACCO PRODUCTS 2018, available at <https://tinyurl.com/ycake739>.

⁵⁵ Tobacco Advisory Group of the Royal College of Physicians, NICOTINE WITHOUT SMOKE: TOBACCO HARM REDUCTION (2016), at 87, available at <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>.

⁵⁶ Public Health England, E-CIGARETTES: AN EVIDENCE UPDATE (2015), at 12, available at <https://tinyurl.com/qyy3rey>

⁵⁷ FDA Commissioner Scott Gottlieb, M.D., *FDA’s Nicotine and Tobacco Regulation and the Key Role of Regulatory Science* (June 18, 2018), speech presented at Tobacco Regulatory Science Program Meeting, White Oak, MD, available at <https://www.fda.gov/NewsEvents/Speeches/ucm611033.htm>.

⁵⁸ Deeming Rule, 81 Fed. Reg. at 29,030 (“FDA recognizes that completely switching from combusted cigarettes to [vapor products] may reduce the risk of tobacco-related disease for individuals currently using combusted tobacco products, given the products’ comparative placements on the continuum of nicotine-delivering products.”); Deeming Rule, 81 Fed. Reg. at 29035 (“FDA agrees that use of [vapor products] is likely less hazardous for an individual user than continued smoking of traditional cigarettes.”); Deeming Rule, 81 Fed. Reg. at 28981 (FDA “believes that the inhalation of nicotine (*i.e.*, nicotine without the products of combustion) is less of a risk to the user than the inhalation of nicotine delivered by smoke from combusted tobacco products”); Scott Gottlieb, M.D. & Mitch Zeller, *Perspective: A Nicotine Focused-Framework for Public Health*, *New Eng. J. Med.* (Sept. 21, 2017), <https://www.nejm.org/doi/10.1056/NEJMp1707409> (stating, vapor products, when combined with measures to reduce nicotine levels in cigarettes, “represent[] a promising foundation for a comprehensive approach to tobacco harm reduction”).

⁵⁹ NASEM Report, *supra* n.34.

⁶⁰ NASEM Report, *supra* n.34., at 18-23.

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“[t]here is conclusive evidence that completely substituting e-cigarettes for combustible tobacco cigarettes reduces users’ exposure to numerous toxicants and carcinogens present in combustible tobacco cigarettes.”⁶¹

No discussion of the public health consequences of implementation of the tariffs on e-cigarette products is complete without appreciating the devastating reality affecting current smokers. Indeed, in the United States alone, the annual burden of smoking-attributable mortality is estimated to be approximately 480,000.⁶² However, the introduction of e-cigarettes and vapor products has the potential to “be among the most significant health innovations of the 21st Century – perhaps saving hundreds of millions of lives,” according to over 50 public health, tobacco, and nicotine specialists in a 2014 letter to the World Health Organization.⁶³ This hypothesis is supported by the fact that smoking rates in the United States have reached historic lows.⁶⁴ Even the American Cancer Society (ACS) now recommends that physicians encourage individuals that will not use FDA-approved cessation medicines to switch to using e-cigarettes.⁶⁵ Indeed, U.S. researchers published a study in *Tobacco Control*, which concluded that switching from traditional cigarettes to vapor products would annually prevent between 1.6 million and 6.6 million premature deaths in the United States.⁶⁶ Further, ACS has released a statement acknowledging the reduced harm of ENDS and warning about the dangers of misleading

⁶¹ NASEM Report, supra n.34, at 18-13. *See also* NASEM Report, at 5-32 (“Conclusion 5-3. There is **substantial evidence** that except for nicotine, under typical conditions of use, exposure to potentially toxic substances from e-cigarettes is significantly lower compared with combustible tobacco cigarettes.”) (emphasis in original).

⁶² U.S. Dep’t of Health and Human Servs., Ctrs. for Disease Control and Prevention, THE HEALTH CONSEQUENCES OF SMOKING—50 YEARS OF PROGRESS. A REPORT OF THE SURGEON GENERAL (2014), at 11, available at <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>; U.S. Food & Drug Admin., *Health Information*, <https://www.fda.gov/tobaccoproducts/publichealtheducation/healthinformation/default.htm#reference>.

⁶³ Letter from specialists in nicotine science and public health policy to Dr. Margaret Chan, Director, World Health Organization (May 26, 2014), available at <https://nicotinepolicy.net/documents/letters/MargaretChan.pdf>.

⁶⁴ *See* Niall McCarthy, *Poll: U.S. Smoking Rate Falls to Historic Low*, FORBES (July 26, 2018), <https://www.forbes.com/sites/niallmccarthy/2018/07/26/poll-u-s-smoking-rate-falls-to-historic-low-infographic/#6b9b414b3351>; *See also* *Smoking rate in U.S. hits all-time low, CDC says*, CBS NEWS (June 19, 2018), <https://www.cbsnews.com/news/smoking-rate-in-u-s-hits-all-time-low/>

⁶⁵ American Cancer Society, *ACS Position Statement on Electronic Cigarettes* (Feb. 2018), <https://www.cancer.org/healthy/stay-away-from-tobacco/e-cigarette-position-statement.html>.

⁶⁶ David T. Levy, Ron Borland, *et al.* TOBACCO CONTROL, Published Online First: (Oct. 2, 2017), doi:10.1136/tobaccocontrol-2017-053759, at 3, <https://tobaccocontrol.bmj.com/content/tobaccocontrol/early/2017/08/30/tobaccocontrol-2017-053759.full.pdf>.

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consumers – who increasingly believe vaping is just as, if not more harmful than, smoking.⁶⁷ What is more, the decrease in cigarette smoking rates, including among youth, has coincided with the introduction of vapor products to the U.S. market.⁶⁸

b. Proposed Tariff Hike Will Undermine the Decline in U.S. Smoking Rates

Notwithstanding the tremendous progress that has been achieved reducing cigarette smoking rates in the United States – as well as the groundswell of support for vapor products from regulatory bodies, public health authorities, and nonprofit organizations – USTR has already imposed increased tariffs on personal electronic vaporizing devices imported under HTS subheading 8543.70.99, including in particular, 8543.70.99.30, 8543.70.99.40, and 8543.70.99.90 (Final Second Tranche, August 7, 2018). Under the current action, USTR proposes to increase tariffs on vapor product parts and components, items incidental to the sale of vapor products (*e.g.*, packaging and labeling material).

As noted above, such action will result in increased prices and decreased demand for personal electronic vaporizing devices and vaping products generally. However, unlike other consumer products, vapor products are uniquely significant from a public health perspective, as discussed above.

It is critical to note that price elasticities for vapor products have been found to be 2-3 times larger than price elasticities for conventional cigarettes, indicating that “sales of e-cigarettes are very sensitive to changes in price.”⁶⁹ Indeed, even small increases in price, can lead to double-digit percentage decreases in e-cigarette sales.⁷⁰

⁶⁷ See Clifford E. Douglas et al., *American Cancer Society Public Health Statement on Eliminating Combustible Tobacco Use in the United States*, CA: A CANCER JOURNAL FOR CLINICIANS (2018), <https://onlinelibrary.wiley.com/doi/full/10.3322/caac.21455>.

⁶⁸ See Clive Bates, *30 Day and Daily Cigarette Smoking Prevalence (Percent) 1975-2017 United States 12th Grade Students – Monitoring the Future 2016 and 2017* <https://www.clivebates.com/documents/MTF12thGradeSmokingTrend+.png>.

⁶⁹ See *e.g.*, Jidong Huang, John Tauras, Frank J Chaloupka, *The Impact of Price and Tobacco Control Policies on the Demand for Electronic Nicotine Delivery Systems*, 23 *Tobacco Control* iii41-iii47 (2014), available at https://tobaccocontrol.bmj.com/content/tobaccocontrol/23/suppl_3/iii41.full.pdf.

⁷⁰ *Id.*, at iii46 (stating, “[w]e found that price is a key determinant of the sales of both disposable and reusable e-cigarettes. A 10% increase in price reduces sales of disposable e-cigarettes by approximately 12%, and by about 19% for reusable e-cigarettes, suggesting that policies altering e-cigarette retail prices, such as limiting rebates, discounts and coupons and imposing a tax, could potentially lead to significant reductions in e-cigarette use.”).

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A study in the journal *Tobacco Control* estimated a 10% price increase in e-cigarettes would reduce sales by 12% to 19%. The study noted that because many vapor products users are experimenting, rising prices could significantly reduce future sales.⁷¹ Another study covering six European Union markets found that every 10% increase in e-cigarette prices was associated with a drop in e-cigarettes sales of approximately 8.2%. Based on dynamic models, the long-term drop in sales was 11.5%. The study also suggested that e-cigarette demand is possibly more responsive to price than cigarette demand.⁷²

Because there are no U.S. manufacturers of vapor product devices, imposition of a tariff is nearly certain to result in an increase in the price experienced by the ultimate consumer.⁷³ By consequence, consumers are less likely to transition away from traditional combustible cigarettes and more likely to cease using vapor products, even if they have already successfully transitioned from cigarettes. Depending on the magnitude of this “relapse effect”, such tariffs could undo years of progress transitioning smokers away from cigarettes. Once these consumers return to cigarette use, they may experience the same difficulties transitioning to vapor products as they experienced upon first switching. And the latest research suggests that adult smokers may go through six or more attempts to successfully quit combustible cigarettes.⁷⁴ This potential unintended consequence would be a disastrous outcome for public health.

IV. Conclusion

We cannot overstate the wide-reaching negative impacts of an additional 10% or 25% tariff on vapor products, their parts and components, and items incidental to their sale that are imported from China. American vapor products companies depend on Chinese imports to keep their businesses running. Small businesses are the backbone of this industry. Even small increases in cost can lead to significant reductions in sales. As noted above, approximately 90% of our respondents do not expect to remain profitable if a 25% tariff hike is imposed on the HTS

⁷¹ Jidong Huang, John Tauras, Frank J Chaloupka, *The Impact of Price and Tobacco Control Policies on the Demand for Electronic Nicotine Delivery Systems*, 23 *Tobacco Control* iii41-iii47, at iii46 (2014), available at https://tobaccocontrol.bmj.com/content/tobaccocontrol/23/suppl_3/iii41.full.pdf.

⁷² M Stoklosa, J Drope, FJ Chaloupka, “Prices and E-Cigarette Demand: Evidence from the European Union,” *Nicotine Tob Res.* 2016 Oct; 18(10): 1973-1980, <https://www.ncbi.nlm.nih.gov/pubmed/27085083>.

⁷³ See e.g., David Gootnick, *Electronic Cigarettes: U.S. Imports in 2016*, U.S. GOV’T ACCOUNTABILITY OFFICE, (Apr. 24, 2017), at 3, available at <https://www.gao.gov/assets/690/684227.pdf> (noting that “e-cigarette imports from China accounted for about 91 percent of U.S. e-cigarette imports by customs value . . . [i]mports from China also accounted for at least 98 percent of customs value for devices with nicotine and parts with and without nicotine . . .”).

⁷⁴ Henry Saffer *et al.*, *E-Cigarettes and Adult Smoking*, National Bureau of Economic Research Working Paper Series, Working Paper 24212 (2018), at 19, <http://www.nber.org/papers/w24212.pdf>.

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subheadings mentioned in Table 1. The staggering increase in duty rates will force American businesses to incur losses or passing on heavy-handed price hikes to consumers. This in turn will have a serious adverse impact on sales.

The small and medium-size businesses that make up our Coalition's member firms would be devastated by a 10% or 25% tariff hike. Such action would prevent American businesses from competing in a soaring global market for vapor products. The number of vapor products users worldwide increased from about seven million in 2011 to 35 million in 2016.⁷⁵ The market research group Euromonitor further estimates that the number of adults who use vapor products will reach 55 million by 2021.⁷⁶ Without access to Chinese imports of vapor products, and their parts, components and incidental items, our member firms will lose market share to foreign competitors who can source their products from China freely.

The vapor products industry contributes billions of dollars to the U.S. economy and employs thousands of Americans who love their country. While the member firms of SFATA, AEMSA, and AVA, and American companies like SV3, support actions designed to protect American business interests, the imposition of tariffs on vapor products imports from China will not accomplish the administration's aims.

Our firms import technologically basic hardware components from China due to the economical availability and unique manufacturing know-how that China's Shenzhen region supplies. Furthermore, other markets do not have the vapor products manufacturing infrastructure in place to accommodate the U.S., the world's largest vapor products market.

As noted in this comment, because there are no U.S. manufacturers of vapor devices, and no realistic possibility that any would form due to the current regulatory framework, U.S. vapor products companies, including retailers, distributors and e-liquid manufacturers, will be forced to continue to do business with Chinese hardware manufacturers – just at a higher cost. Higher tariffs will only exacerbate our reliance on Chinese products in light of crippling FDA premarket authorization requirements and associated costs. Our member firms will have to pass on the majority—if not all—of the associated price hikes to consumers or shut their doors for good.

Higher tariffs will lead to higher prices. Higher prices will only serve to dissuade consumers from purchasing a significantly less harmful alternative to combustible tobacco products. In effect, increasing tariffs on vapor products will turn many smokers back to more dangerous combustible cigarettes. These outcomes are patently disastrous for U.S. businesses, U.S. consumers, and the U.S. public health with no meaningful impact on China.

⁷⁵ Lora Jones, *Vaping - the Rise in Five Charts*, BBC, (May 31, 2018), <https://www.bbc.com/news/business-44295336>.

⁷⁶ *Id.*

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For the reasons stated above, the undersigned organizations respectfully request that the USTR remove the HTS subheadings identified in Table 1 from any final list of HTS subheadings promulgated by USTR for increased rates of duty. We thank you for your consideration of our comments, and appreciate this opportunity to share our perspective with the USTR.

Respectfully submitted,



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