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5737 Mesmer Ave.
Los Angeles, CA 90230
(310) 391-2245
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Testimony of Guy Bentley
Section 301 Committee July 24 / 25, 2018 Meeting July 16, 2018

Members of the committee:

My name is Guy Bentley and I'm a research associate at Reason Foundation. Reason Foundation's nonpartisan public policy research promotes choice, competition and a dynamic market economy as the foundation for human dignity and progress.

I am writing to urge the committee to reject proposed increases to HTS No. 854.370.99.30 and HTS No. 854.370.99.40. Increases in these tariffs would raise the price of Electronic Nicotine Delivery Systems (ENDS) otherwise known as e-cigarettes. E-cigarettes are known to be 95 to 99 percent[1] safer than combustible tobacco cigarettes and are the most popular and effective tool used by Americans to quit smoking.[2]

A threat to tobacco harm reduction

Tariffs of any kind are a direct tax on consumers. There must be an overwhelming social or national security case to justify such burdens on American consumers. In the case of e-cigarettes, no such case can or has been established.

Since e-cigarettes entered the market in a substantial way from 2010 onwards, the adult smoking rate has declined at a substantially accelerated pace. After decades of consistent decline, the adult smoking rate leveled off between 2006 and 2008 at 21 percent. Between 2011 and 2017, however, adult smoking rates fell from 19 percent to 13.9 percent, with many public health experts attributing this success to the widespread availability of e-cigarettes.

E-cigarettes allow smokers to consume the nicotine to which they are either accustomed or addicted but without the lethal smoke which kills half of lifelong cigarette users. The National Academies of Sciences, Engineering, and Medicine,[3] The American Cancer Society,[4] Royal

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[1] Stephens, William E. "Comparing the cancer potencies of emissions from vapourised nicotine products including e-cigarettes with those of tobacco smoke." Tobacco Control. August 4, 2017. https://tobaccocontrol.bmj.com/content/early/2017/08/04/tobaccocontrol-2017-053808?papetoc=
[2] Craver, R. "CDC report shows more smokers try to quit with e-cigs than nicotine replacement products." Winston Salem Journal. April 18, 2017.
[3] National Academies of Sciences, Engineering and Medicine. "Public Health Consequences of E-cigarettes." January 23, 2017. http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx
[4] Douglas, Clifford E. "The American Cancer Society public health statement on eliminating combustible tobacco use in the United States." June 11, 2018. https://onlinelibrary.wiley.com/doi/full/10.3322/caac.21455

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College of Physicians,[5] and Public Health England[6] all agree that smokers who switch exclusively to e-cigarettes dramatically reduce their risk of smoking-related disease. Reducing the burden of tobacco-related disease by, in part, ensuring the availability of safer nicotine alternatives such as e-cigarettes is the official policy of the Food and Drug Administration (FDA) as outlined by Commissioner Scott Gottlieb on July 28, 2017.[7]

In his speech, Commissioner Gottlieb recognized that "nicotine while highly addictive – is delivered through products that represent a continuum of risk and is most harmful when delivered through smoke particles in combustible cigarettes." Switching smokers from the most lethal form of nicotine consumption to safer alternatives has the potential to save millions of lives.

According to modeling by David Levy and colleagues at Georgetown University Medical Center, replacement of cigarettes by e-cigarettes over a 10-year period would yield 6.6 million fewer premature deaths with 86.7 million fewer life years lost.[8] More than 480,000 Americans die each year from smoking, more than seven times the number who died from opioid overdoses in 2017.[9] In order to reduce the number of deaths from smoking, consumers must have access to a wide range of affordable and safer alternatives.

Trading sin taxes for virtue taxes

Policy makers are familiar with the concept of so-called 'sin taxes.' These taxes are imposed to cover the external costs imposed by harmful behaviors such as smoking and excessive alcohol consumption and to deter such behavior in the first place.

Uniquely, tariffs and other such taxes on e-cigarettes raises the specter of 'virtue taxes.' Tariffs on e-cigarettes would directly penalize smokers for switching to a massively less harmful product in order to save their lives. E-cigarettes present no negative externalities in terms of either health of fiscal costs.

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[5] Amos, Amanda et al. "Nicotine without smoke: Tobacco harm reduction." Royal College of Physicians. April 28, 2016.
https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0
[6] Public Health England. "E-cigarettes: an evidence update." August 19, 2015.
https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review
[7] Gottlieb, Scott. "Protecting American Families: Comprehensive Approach to Nicotine and Tobacco." White Oak, MD. July 28, 2017.
https://www.fda.gov/newsevents/newsroom/pressannouncements/ucm568923.htm
[8] Levy et al. "Potential deaths averted in USA by replacing cigarettes with e-cigarettes." Tobacco Control. October 2, 2017.
https://tobaccocontrol.bmj.com/content/tobaccocontrol/early/2017/08/30/tobaccocontrol-2017-053759.full.pdf
[9] Centers for Disease Control and Prevention. "Fast Facts."
https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm

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Tariffs on e-cigarettes run directly counter to FDA's stated goal of reducing the public health burden posed by tobacco cigarettes and provides an implicit subsidy to cigarette manufacturers by making safer nicotine alternatives less attractive than they otherwise would be.
The economic literature demonstrates just how harmful such taxes would be, with the price elasticity for rechargeable e-cigarettes, which comprise the majority of the e-cigarette market, being 1.9 so for every 10 percent increase in the price of e-cigarettes sales will fall by 19 percent.[10]

No advantage to domestic producers

The modern-day e-cigarette was first invented in China by the pharmacist Hon Lik. Concerns over Chinese theft of American intellectual property in no way apply to e-cigarettes. Today, almost all e-cigarettes devices are made in China. This works to the benefit of American e-cigarette companies, who are largely engaged in the business of producing nicotine and nicotine-free e-liquids while importing devices from China. This division of labor has allowed American consumers access to a wide variety of e-cigarette products at affordable prices. Increasing import costs for American e-cigarette companies only serves to harm these businesses and does nothing to contribute to domestic e-cigarette production.

On the retail level, e-cigarette stores operate on incredibly thin profit margins. Depressing sales through higher taxes, which will inevitably be passed onto the consumers, will no doubt lead to the closure of e-cigarette stores and job losses. Due to the FDA's 2016 "Deeming Rule," which imposes enormous costs on domestic e-cigarette producers but whose full implementation has been delayed until 2022, e-cigarette manufacturers are operating in an environment of high uncertainty making the possibility of domestic production in the short term extremely unattractive. Higher tariffs combined with the current regulatory environment mean there is little prospect of developing a successful domestic e-cigarette manufacturing among all but the biggest firms.

Conclusion

Tariffs on e-cigarettes don't just represent an unnecessary cost to consumers, they are an active threat to public health. The winners from these tariffs are not domestic e-cigarette producers but manufacturers of tobacco cigarettes. We know that cigarette taxes decrease cigarette consumption, we also know the same is true for e-cigarettes. Each barrier erected to a smoker's journey to quit increases the likelihood that a smoker will continue to consumer cigarettes until the day die. We, therefore, urge the committee to reject these tariffs.

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[10] Huang J, et. al. "The impact of price and tobacco control policies on the demand for electronic nicotine delivery systems." Tobacco Control. June 16, 2014.
https://tobaccocontrol.bmj.com/content/23/suppl_3/iii41

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Sincerely,

Guy Bentley, Research Associate