TESTIMONY OF BRITTANI CUSHMAN, PRESIDENT
VAPOR TECHNOLOGY ASSOCIATION
BEFORE THE UNITED STATES TRADE REPRESENTATIVE

Good [morning/afternoon]. My name is Brittani Cushman, and I am President of the Board of Directors of the Vapor Technology Association ("VTA"). Today, my testimony is in opposition to the proposed Harmonized Tariff Schedule ("HTS") subheading 8543.70.99 "other machinery." Specifically, we are opposed to the tariff on personal electronic vaporizing devices ("vapor devices", "ENDS products", or "e-cigarettes"), classified in tariff numbers 8543.70.99.30 and 8543.70.99.40, which would adversely affect over 10,000 U.S. businesses and over 10 million U.S. consumers of vapor products by placing a 25% tariff on vapor devices.

The Vapor Technology Association is the U.S. non-profit industry trade association whose members are dedicated to developing and selling high quality vapor products that provide adult consumers with a safer alternative to traditional combustible cigarettes. Our trade association represents the leading manufacturers of personal electronic vaporizing devices – commonly known as vapor devices, ENDS, or e-cigarettes – manufacturers of e-liquids, flavorings, and components, as well as wholesalers, importers, and e-commerce and brick-and-mortar retailers. As is the case with the vapor industry in general, many of the VTA's members are small businesses that have created significant employment opportunities in their local communities and that contribute substantially to local and state economies.

There are four principal reasons why the proposed tariffs on vapor devices should not be imposed. First, the tariff would directly hurt consumers both economically and personally. Second, the tariffs would directly result in harm to the public health as these products are helping Americans move away from deadly cigarettes. Third, these products do not have alternate sourcing suppliers. Finally, the tariff does not involve the types of products that implicate any concerns of Chinese technological advancement.

Proposed HTS 8543.70.99 Would Hurt Consumers.

The Administration has made clear that the imposition of the identified tariffs should not impact U.S. consumers and has properly removed items from the initial list (List 1) of numerous proposed tariffs when they would impact consumers. The Administration should do the same in this case of HTS 8543.70.99 (30) and (40) since they likewise adversely affect consumers.

To be sure, the imposition of a 25% tariff would directly and radically increase the retail price of a vapor device, placing the burden of the tariff squarely on the U.S. consumer. At retail, vapor devices in the United States can run on average anywhere from $30.00 for a basic device to $100.00 for a more advanced device.

Thus, a 25% increase on these devices would drive the average cost to a U.S. citizen up to $37.50 to $125.00 for one device. This problem is complicated by the fact that most vapor consumers in the U.S. own more than one vapor device, which means that the adverse tariff impact would be double or triple the added cost for each American.

Proposed HTS 8543.70.99 Would Be Detrimental to Public Health.

Most importantly, however, adding a 25% tariff to these personal electronic vaporizing devices will thwart gains in public health. Under no circumstances, should tariffs be imposed while U.S. consumers are relying on vapor products to assist them in quitting and/or reducing their smoking.

As a category, vapor products are deemed by many to be significantly safer than traditional combustible tobacco products and thus present a significant harm reduction opportunity. In fact, this June the American Cancer Society stated that vapor products are "closer to nicotine-replacement therapies than to combustible tobacco products" and "are likely to be much less harmful than combustible tobacco products."[1] Additionally, the National Academies of Science issued a report this year finding that there 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."[2] Further, in January 2018, U.S. researchers published a study in *Tobacco Control* concluding that switching from traditional cigarettes to e-cigarettes would annually prevent between 1.6 million and 6.6 million premature deaths in the United States.

As recently as April 24, 2018, Commissioner Gottlieb of the U.S. Food & Drug Administration ("FDA") stated that FDA "see[s] the possibility for ENDS products . . . to provide a potentially less harmful alternative for currently addicted individual adult smokers who still want to get access to satisfying levels of nicotine without many of the harmful effects that come with the combustion of tobacco" and that e-cigarettes "may offer a potentially lower risk alternative for individual adult smokers." Our friends in the UK similarly have found that the hazard to health arising from long-term use of ENDS products is less than five percent of the comparable harm resulting from the use of traditional combustible products. Fortunately, adult smokers in the U.S. have been availing themselves of this opportunity en masse. The Centers for Disease Control reports that the number of smokers as a percentage of the U.S. population has dropped dramatically from 20.6% in 2009, when ENDS products first gained traction in the United States, to only 15.5% as of 2016. Today, some 10.2 million U.S. adults regularly use vapor products – many to move away from deadly combustible cigarettes.

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[1] https://onlinelibrary.wiley.com/doi/full/10.3322/caac.21455

[2] https://www.nap.edu/resource/24952/012318ecigaretteConclusionsbyEvidence.pdf

No Other Manufacturing Alternative Exists.

Vapor devices, which are used to aerosolize e-liquids, are manufactured almost exclusively in China. For that reason, the proposed tariff of 25% on these products would decimate this young and burgeoning U.S. industry. According to the government's own numbers, 91% of such products are manufactured in China.[3] No U.S. companies produce these electronic devices, and any company outside of China wishing to enter this market would be unable to do so under the current FDA regulatory regime, which prohibits the entry of "new products" to the U.S. market absent marketing authorization. This authorization requires a manufacturer to meet extensive premarket application requirements, which are as of yet undefined but no doubt would take no less than two years to complete. Further, even if a company were able to enter this market without the current regulatory restrictions, the lead time to implement such a manufacturing process would be over six months just to procure specialty equipment.

In other words, the imposition of the proposed tariffs would simply eliminate a growing and job-producing market for vapor products, dismantling the growing import, distribution and retail network that has been created in the last few years in the U.S. and has generated tens of thousands of jobs, and tens of millions of dollars of taxes for the national and state economies. And all of this, in addition to the public health gains achieved through these products in eradicating cigarette smoking.

Vapor Devices Do Not Implicate the Types of Sensitive Technologies the U.S. is Concerned With Protecting.

Finally, while e-cigarettes are proving to be groundbreaking technology for the purposes of smoking cessation, they clearly do not involve the types of industrial, sensitive or artificial intelligence technologies about which our country is rightly concerned in protecting. Instead, they represent the first opportunity that our country has to fundamentally change Americans' addiction to cigarettes.

Thank you for your time and consideration.

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[3]ELECTRONIC CIGARETTES: U.S. Imports in 2016, GAO-17-515R: Published: Apr 24, 2017. Publicly Released: May 24, 2017. https://www.gao.gov/products/GAO-17-515R