

April 15, 2026

The Honorable Jamieson Greer  
U.S. Trade Representative  
Office of the U.S. Trade Representative  
600 17th Street NW  
Washington, DC 20508

**Re: Section 301 Investigations of Acts, Policies, and Practices of Certain Economies  
Relating to Structural Excess Capacity and Production in Manufacturing Sectors**

Dear Ambassador Greer:

The Coalition for Smarter Regulation of Nicotine (“Regulate Smarter”) welcomes the opportunity to submit comments in response to the United States Trade Representative’s (“USTR”) Section 301 investigations into acts, policies, and practices of certain economies relating to structural excess capacity and production in manufacturing sectors.

While the scope of this investigation appropriately addresses a wide range of manufacturing sectors, Regulate Smarter writes to urge USTR to account for the multi-billion-dollar illicit flavored e-cigarette market built, supplied, and sustained by Chinese illicit manufacturers since 2020. As we will describe in greater detail below, the negative impact of this illicit Chinese vape market in the U.S. is hard to overstate—millions of American consumers using products that lack even the most rudimentary FDA oversight on safety, billions of dollars diverted from lawful businesses like the ones we represent, tariff evasion, more crime, greater law enforcement burdens, and lost tax revenues. Trade relationships with other countries should be informed by—and, where appropriate, conditioned on—meaningful actions to prevent exactly this sort of illegal and unfair competition.

Regulate Smarter is a coalition of U.S.-based manufacturers, distributors, and retailers committed to operating responsibly within the U.S. Food and Drug Administration (“FDA”)-regulated marketplace. We support an FDA regulatory system that delivers on the original vision of the Tobacco Control Act to regulate tobacco products to drive down underage use *and* provide adult consumers access to smoke-free products proven to be less harmful. That system cannot work if foreign actors—supported by their governments—build alternative markets operating outside of the regulatory system necessary to protect the public and achieve Congress’s original goals.

Regulate Smarter understands that Section 301 investigations are intended to determine whether acts, policies, and practices by certain economies, including China, the European Union, Singapore, Switzerland, Norway, Indonesia, Malaysia, Cambodia, Thailand, Korea, Vietnam, Taiwan, Bangladesh, Mexico, Japan, and India, are “unreasonable or discriminatory and burden

or restrict U.S. commerce.”<sup>1</sup> It is clear that the practice of manufacturing and exporting illicit tobacco and nicotine products to the U.S. jeopardizes not only American businesses and good-paying jobs for American workers, but puts public health and our national security at risk.

## **The Scale of the Illicit E-Vapor Market in the United States**

The illicit market for e-vapor products in the United States has reached staggering proportions. Illicit products are estimated to represent as much as 85% of the \$12.1 to \$14.5 billion U.S. e-vapor market as measured in retail value.<sup>2</sup> Accordingly, illicit e-vapor products represent approximately \$7.2 to \$12.3 billion in retail sales annually. These products overwhelmingly originate from Chinese manufacturers—whose trade practices are the subject of the present Section 301 investigations—and enter the United States through channels that circumvent federal regulatory and customs enforcement mechanisms.

The sheer volume of illicit product entering the U.S. market represents a form of unfair trade practice that warrants attention in the context of this investigation. Foreign manufacturers of illicit ENDS products operate outside the regulatory framework that governs legitimate domestic competitors, while the U.S. regulatory agency responsible for authorizing market access for legitimate ENDS products has effectively blocked new market entrants to compete with foreign illicit ENDS products. The insufficient enforcement actions and ineffective regulatory pathway is subsidizing U.S. market access for foreign-origin illicit ENDS products. This dynamic is consistent with the broader patterns of structural excess capacity and market-distorting practices that USTR is examining across manufacturing sectors.

## **Competitive Harm to Legitimate U.S. Businesses**

The illicit e-vapor market diverts substantial sales volume from legitimate manufacturers, distributors, and retailers operating within the United States. Entities at all levels of the supply chain that sell only authorized or compliant products operate at a significant competitive disadvantage compared to the illicit manufacturers of these products, and the domestic distributors and retailers selling them.

Legitimate manufacturers are structurally disadvantaged by the costs required for product applications and the multi-year FDA product review timeline. Tobacco and nicotine product manufacturers cannot modify their products or launch new offerings without navigating the FDA premarket tobacco product application (“PMTA”) process, which currently takes several years to complete. Illegitimate foreign manufacturers bypass these processes entirely, allowing them to bring products to market at far lower cost with constantly refreshed product offerings that incorporate the latest technologies and flavor profiles, thereby capturing market share from compliant domestic manufacturers in formats that may endanger U.S. consumers due to inadequate scientific evaluation of the products. The majority of the illicit ENDS products manufactured by foreign manufacturers evading U.S. regulatory oversight are flavored, presenting a challenge to domestic manufacturers intent on complying with current PMTA

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<sup>1</sup> Trade Act of 1974, Pub. L. No. 93-618, § 301, 88 Stat. 1978 (codified as amended at 19 U.S.C. § 2411).

<sup>2</sup> *U.S. Retail Sales Data Show 86% of E-Cigarette Sales Are for Illegal Products*, Truth Initiative (Nov. 6, 2024), <https://truthinitiative.org/research-resources/tobacco-industry-marketing/us-retail-sales-data-show-86-e-cigarette-sales-are>; *U.S. E-Cigarette & Vape Market Size & Outlook, 2025-2030*, Grand View Research, <https://www.grandviewresearch.com/horizon/outlook/e-cigarette-and-vape-market/united-states>.

requirements and authorization standards which are nearly impossible to meet to introduce a flavored product to compete with the illicit foreign manufactured vapor products.

Distributors and retailers face a difficult commercial decision—whether to supply only authorized or compliant products and accept the resulting loss of sales to competitors willing to supply illicit products.<sup>34</sup> Multi-outlet and convenience retailers also lose sales on the entire basket of goods that e-vapor consumers would otherwise have purchased during store visits. Eliminating illicit products from the marketplace would drive more e-vapor and ancillary volume to businesses that currently operate in compliance with federal law.

## Market Distortion Effects and Revenue Losses

Beyond the direct competitive harms, the illicit ENDS market creates broader market distortion effects that are relevant to the trade policy considerations at the root of this investigation.

First, the evidence is compelling that this illicit Chinese vapor market comes at a significant cost to the tariff base. U.S. Government data indicates at least \$9 billion in Chinese vapor products have entered the U.S. market in the last three years mislabeled as other goods valued far below their genuine value.<sup>5</sup> FDA has reported that illegal e-cigarettes are commonly mis-declared not only to avoid refusal by U.S. Customs and Border Protection (“CBP”) and FDA at the time of entry, but also to evade import duties and tariffs.<sup>6</sup> CBP recently conducted a review of e-vapor imports, finding a 99% undervaluation rate resulting in revenue recoveries for tariff evasion of over \$134 million.<sup>7</sup>

Second, the illicit market likely decreases the state excise tax base, as distributors and retailers of these products—which are plainly illegal under the Food, Drug, and Cosmetic Act—are less likely to comply with the state excise tax laws. A recent study by the Tax Foundation found strong evidence of widespread excise tax avoidance on these illicit products.<sup>8</sup>

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<sup>3</sup> *Solving the Illicit Nicotine Problem*, NACS (last updated Mar. 3, 2026),

<https://www.convenience.org/Advocacy/Issues/Tobacco/Solving-the-Illicit-Nicotine-Problem>.

<sup>4</sup> *Letter from Energy Marketers of Am., Nat’l Ass’n of Convenience Stores, Nat’l Ass’n of Tobacco Outlets, NATSO, Representing Am.’s Travel Plazas & Truckstops, and SIGMA: Am.’s Leading Fuel Marketers, to Donald Trump, President of the United States* (July 18, 2025), [https://www.convenience.org/getattachment/6cbbf24a-d2a7-4d8a-ad8b-7fb1381407d6/Coalition-Letter-to-White-House-on-Illicit-Vapes-\(July-2025\)\\_Final.pdf?lang=en-US](https://www.convenience.org/getattachment/6cbbf24a-d2a7-4d8a-ad8b-7fb1381407d6/Coalition-Letter-to-White-House-on-Illicit-Vapes-(July-2025)_Final.pdf?lang=en-US).

<sup>5</sup> Robert Schmad, [Chinese Vape Imports Surge Despite Trump Administration’s Crackdown, Data Suggests](#) (Dec. 9, 2025); see [General Administration of Customs People’s Republic of China](#), Customs statistics, Commodity codes: 8543.40 (Electronic cigarettes and similar personal electronic vaporizing devices) and 2404.12 (Other products containing nicotine, intended for inhalation without combustion); [United States International Trade Commission](#), Imports for Consumption, First Unit of Quantity, Commodity codes: 8543.40, 2404.12 and 8543.90.8865 (Parts, of electronic cigarettes and similar personal electric vaporizing devices).

<sup>6</sup> FDA, Press Release, [Joint Federal Operation Results in Seizure of More Than \\$18 Million in Illegal E-Cigarettes](#) (Dec. 14, 2023); FDA, Press Release, [\\$76 Million in Illegal E-Cigarettes Seized in Joint Federal Operation](#) (Oct. 22, 2024); FDA, Press Release, [More Than \\$7 Million Worth of Illegal E-Cigarettes Seized in Federal Operation](#) (Jan. 10, 2025).

<sup>7</sup> See @DFOLosAngeles, X Post, [“Our recent operation”](#) (Sept. 17, 2025).

<sup>8</sup> *Current Challenges in Vaping Markets*, Tax Found. (July 26, 2024), <https://taxfoundation.org/blog/vaping-market-challenges/>.

## Public Health, Crime, and National Security

The illicit market for e-vapor products generates externalities that extend well beyond the economic and competitive harms described above.

The illicit vapor market fueled by China is a major threat to public health in the U.S. All tobacco and nicotine products sold in the U.S. are subject to extensive FDA regulations designed to protect adult consumers and to protect against underage use, including restrictions and oversight on product design, ingredients, flavors, nicotine content, labelling, advertising, and manufacturing practices.<sup>9</sup> Indeed, it is illegal to sell any new vapor product without first obtaining FDA authorization, which involves a thorough FDA review of all aspects of the product's design, performance, manufacturing, and marketing plan. The illicit Chinese vapor market consists of tens of thousands of varieties of products reaching the market without any FDA review, putting adult consumers at risk. Notably, the most recent government data shows that just one illicit brand alone accounted for nearly half of what underage users reported as their brand of choice.<sup>10</sup>

Along with the impact on public health, the flood of illicit Chinese vapes has also increased crime in the U.S. and threatened national security. As has been well-reported, the illicit Chinese vape market in the U.S. relies on an extensive network of organizations involved in criminal conduct beyond just violations of the Tobacco Control Act, including cartels operating out of Mexico who use the proceeds from these activities to fund other activities.<sup>11</sup> Numerous investigations into illegal vape distribution and sales reveal criminal organizations also engaged in illegal narcotics trafficking, illegal firearms, and money laundering.<sup>12</sup> This phenomenon has led the U.S. Department of Justice to conclude that the illicit Chinese vape market “is a national security issue.”<sup>13</sup>

## Recommendations

Regulate Smarter respectfully urges USTR to incorporate the following considerations into its Section 301 investigations and any resulting trade actions:

First, USTR should recognize that illicit trade in tobacco and nicotine products is an unfair trade practice that is consistent with the broader patterns of market-distorting behavior under investigation. Foreign manufacturers that flood the U.S. market with products that violate federal law benefit from an unlawful competitive advantage over compliant domestic businesses.

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<sup>9</sup> 21 U.S.C. §§ 387–387u.

<sup>10</sup> NYTS 2025 data were downloaded from National Youth Tobacco Survey (NYTS) | FDA on Mar. 4, 2026.

<sup>11</sup> Currie Myers, *How Unregulated Vapes Are the Cartels' Newest Weapon — and What Law Enforcement Can Do*, Police1 (July 24, 2025); National Sheriffs' Association, *Cartels and the Chinese E-Vapor Connection* (2025) Associated Press, *After Mexico Bans Vapes, Cartels Tighten Their Grip on a Booming Market*, U.S. News & World Report (Jan. 31, 2026).

<sup>12</sup> Associated Press, *Authorities Raid Vape Shops Selling Illegal THC Products* (various AP syndications, 2024–2025); Myers, Currie, *How Unregulated Vapes Are the Cartels' Newest Weapon*, Police1 (July 24, 2025); *Tunnel Used by Texas-Based Vape Cartel Shut Down by DEA*, NewsNation (last visited Apr. 15, 2026), <https://www.newsnationnow.com/us-news/immigration/border-coverage/cartels/tunnel-texas-vape-cartel-dea/>.

<sup>13</sup> United States Department of Justice, *More Than Two Million Illicit Vaping Products Seized in Nationwide Sweep* (Sept. 25, 2025); *Operation Vape Trail Cracks Down on Illegal Substances in Vape Shops* (Sept. 22, 2025).

Second, USTR should consider conditioning favorable trade terms on demonstrable efforts by trading partners to crack down on the manufacture and export of illicit tobacco and nicotine products destined for the U.S. market. In particular, USTR should secure an obligation from China, including the State Tobacco Monopoly Administration and other relevant authorities, to:

1. Implement and enforce effective controls that prevent the export to the United States of e-cigarette products that are not in compliance with FDA regulations or otherwise lack FDA marketing authorization;
2. Ensure meaningful enforcement of the People's Republic of China's existing export rules requiring e-cigarette products to comply with the legal and regulatory requirements of destination markets, including the United States; and
3. Establish transparent, verifiable obligations with objective benchmarks and ongoing oversight mechanisms to confirm compliance.

Third, USTR should work in coordination with CBP, FDA, and other relevant agencies to strengthen interdiction of illicit ENDS products at the border, including through enhanced scrutiny of shipments from countries identified as major sources of illicit products. Aggressive enforcement action (including all appropriate civil and criminal penalties) should be taken to ensure that bad actors finally understand the consequences for their unlawful actions.

Finally, USTR should ensure that any tariff actions or trade remedies account for the significant tariff revenue losses attributable to mis-declared and undervalued illicit e-vapor imports.

## **Conclusion**

The illicit market for e-vapor products represents a multi-billion-dollar challenge that harms legitimate U.S. businesses, deprives federal and state governments of tax and tariff revenue, undermines public health, jeopardizes national security, and funds criminal enterprises. Trade policy is a critical and underutilized tool for addressing the foreign sources of this illicit market. Regulate Smarter encourages USTR to seize the opportunity presented by the current Section 301 investigations to eliminate the illicit tobacco and nicotine product market and trade as part of the broader effort to combat unfair foreign trade practices and protect American manufacturers, workers, and consumers.

Regulate Smarter appreciates the opportunity to submit these comments and looks forward to continued engagement with USTR on these important issues.

Sincerely,



Richard Burr  
Chairman  
Coalition for Smarter Regulation of Nicotine