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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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June 8, 2015

The Honorable Meredith M. Broadbent
Chairman
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Dear Chairman Broadbent:

According to a recent report prepared by the U.S. Government Accountability Office (GAO) for the Committee on Finance (attached),¹ the U.S. market for electronic cigarettes (or “e-cigarettes”) was roughly \$2.5 billion in 2014. GAO reports that industry experts estimate that most of these products are imported with upwards of 90% coming from China. A significant quantity of e-cigarette parts and liquids are also believed to be imported. However, as the GAO points out in its report, the actual volumes and sources of these imports are unknown because current tariff schedules do not contain reporting codes specific to these products. I am writing to request that the Committee for Statistical Annotation of Tariff Schedules (also known as the “484(f) committee”) adopt statistical reporting numbers for these products.

The e-cigarette market in the U.S. is already a multi-billion dollar market and growing. Unlike the traditional U.S. market for tobacco products where less than 6% of products are imported, it appears that most e-cigarettes are imported, as are the nicotine-containing liquids used in them. Although the health risks of these products are not fully known, the FDA and the Centers for Disease Control and Prevention (CDC) have warned of their use. In 2014, the U.S. Food and Drug Administration (FDA) proposed to deem e-cigarettes to be tobacco products under the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act).² Currently, because they are not a traditional tobacco product, e-cigarettes and liquids can be sold without restriction to vulnerable segments of the population. CDC recently reported that use among middle and high school students tripled in just the past year from 4.5% of students in 2013 to 13.4% in 2014.³ Nonetheless, at this point, these products are not subject to health-based regulation, unlike traditional tobacco products imported into the U.S. Similarly, these products are not subject to unique import tariffs or federal excise taxes.

¹ *Electronic Cigarettes: Imports, Tariffs and Data Collection*, GAO-15-491, May 7, 2015

² Proposed Rule: Tobacco Products Deemed to be Subject to the Food, Drug and Cosmetic Act (Deeming), April 24, 2014, (<https://federalregister.gov/a/2014-09491>)

³ Press Release: E-Cigarette use triples among middle and high school students in just one year, CDC, April 16, 2015, (<http://www.cdc.gov/media/releases/2015/p0416-e-cigarette-use.html>)

Consequently, as GAO reports, the full extent of imports of e-cigarette and related liquids is unknown because these products, as well as e-cigarette components and intermediate chemicals used to manufacture nicotine-containing liquids, are not currently tracked under any regulatory or revenue system. Within the current tariff system they are also not currently subject to unique statistical reporting numbers that would allow the volume, value, and source of these products to be tracked. Instead, they are imported under broad basket categories where e-cigarettes are included with electrical equipment such as strobe lights and hand-held calorie counters.

It is my understanding that pursuant to section 484(f) of the Tariff Act of 1930, there is explicit authority to adopt applicable statistical reporting numbers for just such purposes. As you know, this function is carried out routinely by the interagency Committee for Statistical Annotation of Tariff Schedules.

Because of the large and growing size of the e-cigarette market and because of the potential revenue, public health and economic impacts of e-cigarette and related imports, I respectfully request that the interagency 484(f) committee adopt statistical reporting numbers for e-cigarette devices, e-cigarette parts, and e-cigarette liquids and cartridges respectively.

Sincerely,



Ron Wyden
Ranking Member

cc: Hon. John H. Thompson
Director, U.S. Census Bureau

Hon. R. Gil Kerlikowske
Commissioner, U.S. Customs and Border Protection