Convenience Distribution ASSOCIATION
11250 ROGER BACON DRIVE #8 ▪ RESTON, VA 20190
P 703.208.3358 ▪ F 703.573.5738
WWW.CDAWEB.NET

April 8, 2026

Ms. Jennifer Thornton
General Counsel
Office of the United States 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 (USTR–2026–0067)

Dear Ms. Thornton:

I write as President and Chief Executive Officer of the Convenience Distribution Association ("CDA"). CDA is the trade organization working on behalf of convenience products distributors in the United States. CDA distributor members represent more than $102 billion in annual convenience product sales, directly employ nearly 59,000 workers, and support more than 173,000 jobs nationwide. The convenience distribution sector contributes billions in economic and fiscal activity in the U.S. economy including $2.3 billion in local, state, and federal tax revenue and approximately $30 billion in local, state and federal tobacco excise taxes.

CDA appreciates the opportunity to submit comments in response to the Office of the United States Trade Representative's ("USTR") Section 301 investigation concerning acts, policies, and practices that contribute to structural excess capacity and unfair trade conditions in manufacturing sectors. These comments focus on the large-scale production and export from the People's Republic of China ("PRC") of unauthorized electronic nicotine delivery systems ("ENDS") intended for sale in the United States and the resulting impact on the lawful U.S. distribution system.

CDA's members are not seeking special treatment; rather, they seek a market in which lawful, American-owned and operated businesses are not structurally disadvantaged by an upstream, foreign-origin supply chain that routinely evades U.S. legal requirements. ENDS imports are, therefore, not merely a domestic regulatory challenge. They are also a trade challenge that involve manufacturing scale, export practices, and persistent customs evasion—conditions that align with the concerns USTR is examining in this proceeding.

Role of Responsible Distributors in a Regulated Market

Responsible convenience product distributors play a central role in ensuring compliance with U.S. tobacco and nicotine laws. Distributors operate under extensive federal, state, and local law, regulatory, and licensing requirements and invest in compliance programs and operational controls designed to ensure that products entering commerce satisfy applicable regulatory standards before being sold to retailers.

With respect to tobacco and nicotine products, many distributors are required to prepay excise taxes and, in applicable jurisdictions, apply tax stamps; distributors also maintain secure warehousing, inventory controls, recordkeeping systems, employee training programs, and are subject to inspection and audit. This compliance framework depends on the premise that products entering the United States have been lawfully manufactured and imported in accordance with U.S. requirements.

This regulated distribution model relies on a basic predicate: products entering the United States are properly declared and subject to meaningful admissibility review. Where products are systematically misdeclared or otherwise moved through channels designed to avoid customs and FDA review, the compliance system downstream is undermined. The harm is not limited to one product category. Rather, persistent import evasion erodes the incentives for lawful participation and penalizes businesses that invest in compliance.

Illicit PRC Manufactured ENDS Bypass Responsible Distributors

The Department of Health and Human Services recently reported that: "[u]p to 85% of e-cigarette devices and pods sold in the U.S. retail outlets are illegal products. Federal enforcement efforts have seized millions of unauthorized devices, but illegal sales persist…."[1] Specifically, these illicit ENDS products are primarily manufactured in the PRC and lack marketing authorization from the U.S. Food and Drug Administration ("FDA").[2] These products are unlawful for sale in the United States yet continue to enter the country in large volumes.

A key feature of this problem is that unauthorized ENDS products frequently do not move through responsible convenience distributors, instead entering the stream of commerce through informal or illicit channels that are specifically designed to evade regulatory scrutiny and avoid the compliance obligations borne by lawful distributors.[3] This bypass has several consequences:

- Market Displacement: Distributors that comply with FDA requirements and invest in compliance programs, trainings, and operations compete against entities that completely flout the law.
- Regulatory Erosion: When products circumvent admissibility review and compliance controls, the regulated marketplace becomes increasingly difficult to sustain.

---

[1] Department of Health and Human Services. (September 15, 2025). HHS Makes Push to Stop Vaping [Press Release]. https://www.hhs.gov/press-room/hhs-youth-vaping-resource-guide-illegal-vapes.html.

[2] See Washington Examiner, Chinese vape imports surge despite Trump administration's crackdown, data suggests (12/9/25) and 2Firsts, China's E-Cigarette Exports Fall Slightly to USD 10.6 Billion in 2025, U.S. Market Further Consolidates Lead (1/20/26).

[3] Reuters, How middlemen funnel illegal Chinese vapes into the United States (6/26/25).

- Enforcement Asymmetry: Lawful U.S. entities are expected to maintain rigorous compliance systems, while foreign manufacturers and illicit importers exploit weaknesses in admissibility review and customs controls.

CDA's distributor members, responsible retailers, and our combined youth use prevention efforts, are undermined by the illicit ENDS market. The more thoroughly distributors comply, the more they are undercut by supply chains that operate outside the regulated system and don't play by the rules. This dynamic undermines distributor compliance investments and weakens the regulatory architecture that relies on law-abiding intermediaries to control age restricted products.

PRC Export Practices and Excess Capacity

This investigation addresses structural excess capacity and related practices in manufacturing sectors. ENDS production and export activities in the PRC occur within a state supervised- structure administered by the State Tobacco Monopoly Administration ("STMA"). Under PRC regulations, exported e-cigarette products are required to comply with the laws and regulations of the destination market.[4, 5]

Notwithstanding this requirement, ENDS products that lack FDA marketing authorization continue to be produced and exported to the United States at scale.[6] In many cases, these same products are not permitted for sale within the PRC.[7] This divergence raises serious questions regarding PRC oversight of manufacturing capacity and export compliance.

The volume and persistence of these illicit imports indicate production capacity directed toward unlawful foreign supply rather than legitimate market access. This excess capacity enables pricing that lawful, compliance-bearing U.S. supply chains cannot match, further distorting competition in the U.S. market.

Import Evasion and Enforcement Limitations

Unauthorized ENDS products commonly enter the United States through misdeclaration, misclassification, undervaluation, or concealment.[8] These methods are designed to evade scrutiny by U.S. Customs and Border Protection ("CBP") and the FDA. Even when interdictions occur, illicit networks can adapt quickly by changing routing, packaging, and documentation practices – one example being, "port shopping," by which illegal products repeatedly try to enter the United States.[9]

CDA has previously supported regulatory measures intended to strengthen import admissibility review and reduce reliance on manual processes. For example, CDA supported requiring an FDA

[4] The STMA "supervise[s] and manage[s] the… export…of e-cigarettes." Administrative Rules for E-Cigarettes Import-Export Trade and Foreign Economic and Technical Cooperation, Art. 3. (10/12/22).
[5] "E-Cigarette products for export shall comply with the laws, regulations and standards of the destination country or region…"., Administrative Rules for E-Cigarettes Import-Export Trade and Foreign Economic and Technical Cooperation (10/12/22).
[6] ABC News (WJLA), Illegal Chinese vapes flood US market, feed youth vaping epidemic (10/2/25).
[7] "Sale of flavored e-cigarettes other than tobacco flavored…or…products that users can add their own e-vapor matter is prohibited." Administrative Measures for E-cigarette Management, Art. 26, 33. (3/11/22).
[8] See, e.g., FDA, Press Release, Joint Federal Operation Results in Seizure of More Than $18 Million in Illegal E-Cigarettes (12/14/23); FDA, Press Release, $76 Million in Illegal E-Cigarettes Seized in Joint Federal Operation (10/22/24); FDA, Press Release, FDA and CBP Seize Nearly $34 Million Worth of Illegal E-Cigarettes During Joint Operation (5/22/25).
[9] CBP, CBP, HHS Seize $86.5 Million Worth of Illegal E-Cigarettes in Largest-Ever Operation (9/10/25).

Submission Tracking Number ("STN") for certain nicotine products in CBP's Automated Commercial Environment ("ACE") to facilitate more consistent import review and better allocate enforcement resources.[10] CDA has also emphasized that the scale of inbound shipments presents inherent enforcement challenges, given the volume of containers arriving at U.S. ports and borders each year.

However, the persistence of unauthorized ENDS imports demonstrates that border enforcement alone is not sufficient absent meaningful upstream changes. Increased tariffs may not deter conduct where the core business model depends on evasion.[11] Indeed, additional cost impositions can, in certain contexts, increase the incentive for misdeclaration and concealment unless paired with strong verification and accountability mechanisms.

Downstream Compliance Burdens and Enforcement Asymmetry

Responsible U.S. distributors operate under a compliance framework that includes licensing, audits, inspections, recordkeeping, tax requirements, and—in many jurisdictions—strict liability exposure. These obligations require substantial investments in personnel, systems, secure facilities, and training.
By contrast, foreign manufacturers and illicit importers that ship unauthorized ENDS into the United States often face limited practical consequences, particularly when shipments are misdescribed, routed through intermediaries, or otherwise structured to frustrate enforcement.
This enforcement asymmetry produces distorted outcomes where:

- Compliance is penalized: Lawful American-owned and operated businesses entities that invest in compliance are undercut by actors who do not.
- Illicit channels expand: As unauthorized supply gains market share, lawful distribution channels are squeezed.
- Regulatory objectives are frustrated: Age-restricted product controls and product oversight are undermined when the supply chain is noncompliant.

This imbalance rewards evasion and places responsible American businesses at a structural disadvantage.

Section 301 Considerations

From a trade perspective, the continued manufacture and export of unauthorized ENDS products to the United States from the PRC-based companies reflect production and export practices that are inconsistent with a rules-based trading system and that impose unreasonable burdens on U.S. commerce.

Federal agencies and Members of both the U.S. Senate and U.S. House of Representatives have raised concerns regarding the connection between illicit ENDS supply chains and broader criminal activity. They reasonably argue that there are limits to domestic enforcement efforts and believe

[10] CDA, Submission of FDA Import Data in the Automated Commercial Environment for Certain Tobacco Products (Docket No. FDA–2024–N–1111) (10/8/24).
[11] See, e.g.,Robert Schmad, Chinese Vape Imports Surge Despite Trump Administration's Crackdown, Data Suggests (12/9/25).

the best point of intervention is at the source, in China.[12,13] Further, the Members urged the U.S. government, including the USTR, to use available trade tools to address the PRC's policies and practices in facilitating the unlawful production and export of illicit ENDS to the U.S.

The Section 301 framework is well-suited to address illicit ENDS flows originating from the PRC because the problem implicates upstream production scale, export practices, and persistent evasion that burdens U.S. commerce.

Requested Action

CDA respectfully urges USTR to use this investigation and related bilateral engagements to seek **specific, enforceable commitments** from the PRC, including commitments that address the upstream practices enabling unauthorized ENDS exports to the United States by:

- Requiring PRC authorities, including the STMA, to prevent the manufacture and export of ENDS products intended for the United States that lack FDA marketing authorization;
- Ensuring consistent enforcement of existing PRC export rules requiring compliance with destination market legal and regulatory requirements; and
- Providing measurable benchmarks, transparency, and verification sufficient to confirm ongoing compliance.

Without effective controls at the source, licensed U.S. distributors cannot, through downstream compliance alone, prevent unlawful products from distorting the regulated marketplace.

Conclusion

CDA appreciates USTR's attention to the acts, policies, and practices that contribute to structural excess capacity and unfair trade conditions in manufacturing sectors that undermine responsible U.S. distributors. The large-scale production and export of unauthorized PRC-manufactured ENDS products into the U.S. is a clear example of conduct that burdens domestic commerce by displacing lawful distribution, rewarding evasion, and undermining regulated market structures.

CDA respectfully urges USTR to pursue source-focused, verifiable, and enforceable commitments that reduce unlawful export flows and restore the ability of lawful U.S. distributors to compete in a rules-based marketplace. Without meaningful upstream controls, compliance-driven U.S. distributors cannot correct a market that is being structurally distorted by illicit supply chains.

Sincerely,

Richard Owen, President and CEO
Convenience Distribution Association

[12] Financial Crimes Enforcement Network, Financial Trend Analysis: Fentanyl-Related Illicit Finance (04/25) pp 2, 18, 19. and ATF Deputy Director Robert Cekada, DOJ Press Conference (9/10/25).
[13] See U.S. Senator Todd Young, Young, Colleagues Urge Administration to Combat Illegal Chinese Vapes (2/6/26) and U.S. Representative Mike Carey, Carey Leads 71 Lawmakers in Letter to Treasury, USTR on Curbing Import of Dangerous Chinese Vapes (3/5/26).