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April 27, 2020

**VIA EDIS**

The Honorable Lisa R. Barton  
Secretary to the Commission  
U.S. International Trade Commission  
500 E Street, SW, Room 112  
Washington, DC 20436

Re: *Certain Tobacco Heating Articles and Components Thereof*,  
Dkt. No. 337-3447

Dear Secretary Barton:

On Thursday, April 23, 2020, Latham and Watkins LLP (“Latham”) filed timely comments to Complainants’ Public Interest Statement in the above-referenced matter on behalf of the Consumer Advocates for Smoke-free Alternatives Association (“CASAA”). Latham had full permission to do so and submitted the filing as a courtesy to CASAA.

On Friday, April 24, 2020, the ITC’s docketing team rejected the filing because a law firm may not file a document on behalf of a person or entity that it does not formally represent. Neither Latham nor CASAA received notice of this issue in time to address the concern.

The undersigned represents CASAA for purposes of perfecting the filing of its public interest comments. CASAA respectfully submits that there is good cause for the Commission to accept and consider its public interest filing out of time. The filing, in fact,

was made in a timely fashion but was rejected based on a technical imperfection in the manner of its filing. Moreover, given the statutory provisions and Commission rules governing consideration of the public interest, it is important that the Commission consider to the greatest extent possible all such submissions. Finally, neither the Commission Staff nor Complainants will be prejudiced by acceptance of the filing at this time, given that it was served on the Commission Staff and Complainants on the day it was originally filed.

For the foregoing reasons, CASAA respectfully requests that the Commission accept and consider its public interest submission out of time.

Sincerely,

*/s/ Benjamin Levi*

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Benjamin Levi



The Consumer Advocates for Smoke-free Alternatives Association

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April 22, 2020

**VIA EDIS**

The Honorable Lisa R. Barton  
Secretary to the Commission  
U.S. International Trade Commission  
500 E Street, SW, Room 112  
Washington, DC 20436

*Re: Certain Tobacco Heating Articles and Components Thereof, Investigation No. 337-TA-3447*

Dear Secretary Barton:

The Consumer Advocates for Smoke-free Alternatives Association (CASAA) submits the following comments to the U.S. International Trade Commission (“ITC”) in response to the Public Interest Statement filed on April 9, 2020 in the above-referenced case. Complainants ask the ITC to exclude from the U.S. market all IQOS heat not burn (“HnB”) systems. CASAA believes that such severe measures are inappropriate, would remove choices for consumers seeking a low-risk alternative to smoking, and would give a competitive advantage to high-risk traditional cigarettes, all of which work against the public interest and genuine public health.

By way of background, CASAA is a non-profit 501(c)(4) organization with an all-volunteer board and a grassroots membership of more than a quarter of a million individuals from all walks of life. CASAA is a consumer organization, not a trade association or industry representative. CASAA is dedicated to ensuring the availability of reduced harm alternatives to

smoking and to providing smokers and non-smokers alike with honest information about those alternatives so that they can make informed choices.

CASAA specifically has no comment in connection with the underlying issue of whether or not there has been patent infringement. CASAA speaks only on the issue of the necessity of ensuring that IQOS remains available for consumer purchase and use in the United States.

**1. IQOS is used in the U.S. as a reduced risk alternative to smoking.**

Complainants describe the physical use of IQOS in their complaint, but they give short shrift to discussing the promise that HnB technology holds for people who smoke, and particularly for those who have tried approved smoking cessation products and/or e-cigarettes (sometimes referred to as vapor products) and found them to be an unacceptable low-risk substitute for smoking. IQOS is the only HnB product that has successfully navigated the complicated, expensive, and uncertain premarket tobacco product application (PMTA) process, receiving Food and Drug Administration (FDA) approval to be sold in the U.S. As part of the PMTA process, FDA concluded that marketing IQOS is “appropriate for the protection of the public health because, among several key considerations, the products produce fewer or lower levels of some toxins than combustible cigarettes.”<sup>1</sup>

IQOS is not simply another tobacco product. IQOS allows consumers to replace their smoking habit with HnB technology, thereby lowering their exposure and risk as compared to smoking.

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<sup>1</sup> “FDA permits sale of IQOS Tobacco Heating System through premarket tobacco product application pathway,” Food and Drug Administration News Release, April 30, 2019, <https://www.fda.gov/news-events/press-announcements/fda-permits-sale-iqos-tobacco-heating-system-through-premarket-tobacco-product-application-pathway>.

**2. Removing IQOS from the marketplace will reduce choices for consumers seeking reduced-risk alternatives to smoking, which is against the public interest.**

Complainants refer to a broad category of “potentially reduced risk products” they define as “electronic nicotine delivery systems” (ENDS), which they assert includes both HnB (specifically, IQOS, since it is the only HnB product currently available in the U.S.) and e-cigarettes. Complainants assert that the existence of other products in the ENDS category means that if IQOS is removed from the market, consumers will still have choices. This is, at best, disingenuous.

While it is sometimes convenient to talk about e-cigarettes and HnB, both of which are lower risk than smoking, as a cohesive ENDS product class, there are substantial differences between these types of products (and, in fact, substantial differences even within the e-cigarette product category). These differences in form factor, design, and patterns of use are important because they allow consumers to find products that work for them as an acceptable and effective reduced-risk alternative to smoking. Specifically, IQOS heats tobacco, while e-cigarettes heat a liquid. For the consumer, e-cigarettes and HnB provide very different experiences in terms of, among other things, the nicotine delivery, taste and aroma. These differences are substantial enough such that for some people who smoke, e-cigarettes will not be an effective alternative, and HnB technology may be the only product that enables them to make the switch from smoking and to reduce their health risk.

Complainants’ assertion also ignores the fact that as a practical matter, the biggest competition for all products in the reduced-risk category are traditional combustible cigarettes. Consumers who cannot find an acceptable low-risk alternative to smoking will likely continue or return to smoking. Consequently, anything that serves to reduce choices will necessarily cause

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