November xx, 2020

Russell Vought

Director

Office of Management and Budget

Dear Director Vought,

We are concerned that the Administration is rushing through a proposed rule to eliminate the de minimis exemption for Section 301 tariffs without understanding the significant economic impact of the measure on the U.S. economy, particularly for small and medium-sized businesses. The rule is titled “Excepting Merchandise Subject to Section 301 Duties from the Customs De Minimis Exemption” on the OMB’s regulatory dashboard.

Currently, the proposed rule is not being handled in accordance with established administrative procedures, as defined in Executive Order 12866 (“EO 12866”), which requires that a proposed significant regulatory action be designated as “economically significant” if the annual impact on the U.S. economy will be $100 million or more. The proposed rule will require the submission of customs entries for millions of additional shipments that currently do not require entries. Under the proposed rule, importers of applicable products would have their costs to enter products go up in addition to paying much higher duties.

The proposed rule would cover thousands of tariff lines and hundreds of billions of dollars’ worth of goods from trading partners around the world. The impact on the express industry alone is estimated to be four times the $100 million threshold, and numerous other importers, industries, retailers, and manufacturers across the American economy will experience significantly increased costs as well. For example, a retailer bringing in a product with a value of $50, and hoping to sell it for $65 in order to make a profit, would incur $60 in additional tariffs and fees if the rule were implemented. Members of a business coalition have provided OMB with estimated cost increases the rule would cause that range from $140 million to $1.5 billion annually. In the middle of an ongoing pandemic, these costs would fall disproportionately on the businesses hit the hardest - microenterprises and small and medium-sized businesses, which import a higher percentage of low value shipments as components to a manufacturing process or for retail sales. Moreover, this rule will lead to increased costs on low value shipments of personal protective equipment, making it more difficult for Americans to get lifesaving products they need at the time they need them the most.

Designating this rule as economically significant is important because it will require a cost-benefit analysis be undertaken pursuant to EO 12866, allowing the trade community and other interested stakeholders sixty days to evaluate that analysis, along with the proposed rule, and the opportunity to submit comments to the Government. A cost-benefit analysis would be particularly illuminating in this case as it is unlikely that any benefits of the rule would justify the greatly increased costs, to both industry and Government, if the rule is implemented. It will also provide the public an opportunity to comment on whether this rule is consistent with the administration’s efforts to ensure that regulations are narrowly tailored to achieve their stated objectives while controlling unnecessary costs to American businesses, consumers and the economy.

Additionally, the historical goal of de minimis was to limit the Government’s expense that was disproportionate to the revenue that could be collected from a tariff on low value goods. The elimination of the de minimis exemption for goods subject to Section 301 duties would significantly increase the number of formal entries that would need to be filed annually, at a substantial cost not only to industry (as noted above), but to the Government. Further, it was the sense of Congress in the Trade Facilitation and Trade Enforcement Act of 2015 that de minimis provides “significant economic benefits to businesses and consumers in the United States and the economy of the United States through costs savings and reductions in trade transactions costs.” As the U.S. economy struggles to return to normal in the midst of the greatest economic downturn since the Great Depression, adding significant business and consumer costs on de minimis goods, including critical medical supplies such as face masks and personal protective equipment, would certainly be in contravention of the sense of Congress.

Finally, we note that this rule did not appear on the Regulatory Agenda for the agencies drafting the rule, Treasury Department and U.S. Customs and Border Protection. Pursuant to Executive Order 13771, the Administration typically does not allow rules to be submitted for OMB review if they were not listed on the agenda. We see no reason why a rule with such a significantly large impact on both Government and the private sector should be rushed out without allowing the normal period for analyzing the economic impact, carefully considering the benefits and costs, and providing all stakeholders an opportunity to comment in accordance with normal administrative procedures. We urge you to designate this rule as economically significant to correct that problem.

Sincerely,

Cc:

Administrator, Office of Information & Regulatory Affairs

Secretary of the Treasury

United States Trade Representative

Director, National Economic Council

Administrator, Small Business Administration

Commissioner, U.S. Customs and Border Protection