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November 25, 2020

The Honorable Paul Ray
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20502

Re: Excepting Merchandise Subject to Section 301 Duties from the Customs De Minimis Exemption [RIN: 1515-AE57]

Dear Administrator Ray:

On behalf of the Coalition for a Prosperous America, we submit the following information for consideration regarding the proposed rule submitted by U.S. Customs and Border Protection (“CBP”) ensuring that merchandise subject to Section 301 Duties is not eligible for entry under Section 321 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1321 (“Section 321”).

The Coalition for a Prosperous America represents America’s manufacturers across industry – from tool and die machinists to pharmaceutical manufacturing – our members represent essential industries who are making product here in America. Our members are the backbone to the US economy. With over four million households represented our coalition proudly supports this rulemaking in question.

Specifically, we support CBP’s determination that this rulemaking is not economically significant and we ask OIRA to expedite this process as in accord with President Trump’s priorities and to eliminate the harm that CBP is trying to address. Further, in our November 13, 2020 meeting with your office, we were offered the opportunity to provide any additional information in writing. Below are our comments.

First, we take it as accepted that when Executive Order 12866 refers to “annual effect on the economy of \$100 million”, it speaks of the American economy, not the global economy.

Second, 12866 is nonjusticiable and that point should not be overlooked. Section 10 of 12866 clearly states that it is meant to only improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or

employees, or any other person. Therefore, to continue to dill-dally about whether a rule is economically significant – especially a proposed rule like this where much of the rulemaking is unquantifiable – seems to put one section (which is not required by statute) ahead of the President’s priorities.

Third, it is impossible to prove that this rule would have a measurable effect on the US economy of over \$100 million. The import lobby which is beholden to totalitarian regimes like the Chinese Communist Party will loosely claim that their members will be affected if this proposal were to be finalized – but the simple fact is that cannot be proved. For example, during this coronavirus pandemic we saw how many moved their supply chains out of China. In June 2020, a survey revealed that 33 percent of supply chain leaders already moved their businesses out of China or plan to by 2023.¹ What is stopping these other suppliers from moving to other countries if this rule were to be implemented. Further, in the above-mentioned survey, tariffs were the primary reason to move supply chains out of China. As we understand it, this proposed rule seeks to close the de minimis loophole and not allow certain shipments under \$800 in value from China to escape tariffs. Therefore, how can anyone honestly say they can definitively prove that this proposal would have such an economic impact. The fact is – no one can prove such a case and this is only another reason to allow the rule to proceed as intended by CBP – as not economically significant.

Fourth, on November 5, 2020 you received a letter from the American Association of Exporters and Importers (“AAEI”). AAEI argued that a \$100 million threshold would be met, but failed to disclose in its calculations that the increased cost effects they calculated would be borne by foreign vendors entirely outside of the United States economy, and were entirely hypothetical.

Specifically, AAEI stated the following:

- AAEI’s research found over 12 million sellers using e-commerce platforms and retailers to sell physical products in the United States.
- Of the total universe of 12 million sellers, AAEI estimates that over 4.6 million sellers are MSMEs.; and, concluding:
- Based on AAEI’s estimate of 4.6 million MSME sellers, we calculate that each seller would need to incur just \$21.29 of additional cost to reach \$100 million in economic impact.

¹ Gartner Survey Reveals 33% of Supply Chain Leaders Moved Business Out of China or Plan to by 2023, June 2020, available at <https://www.gartner.com/en/newsroom/press-releases/2020-06-24-gartner-survey-reveals-33-percent-of-supply-chain-leaders-moved-business-out-of-china-or-plan-to-by-2023>.

This data is speculative at best and fails to assert the impact on the US economy. These above-mentioned sellers are located outside of the United States and likely based in China. AAEE's concern is more about China's economy than the US economy.

Fifth, no costs will be borne by US customs brokers, any argument to suggest such costs is meritless and lacks general knowledge of customs process. The process of precisely how foreign businesses use Section 321 can be seen in a CBP ruling earlier this year.² This ruling explains how foreign businesses with no presence in the United States engage U.S. customs brokers to "import merchandise under the Section 321 administrative exemption and store the merchandise at warehouses operated by an online fulfillment service provider, such as Amazon, eBay, or Shopify." While the merchandise may be entered into the United States via Section 321, title to the merchandise remains with the foreign vendor.

Besides the foreign business, the only other party with relation to Section 321 merchandise is the U.S. customs broker who acts as the foreign business' agent. But customs brokers will not be responsible for paying duties under CBP's proposed rule. Indeed, any cost to the customs broker would be absolutely trivial, and certainly wouldn't amount to \$100 million in costs. Custom brokers are already responsible for ensuring that the Section 321 shipment is not subject to any anti-dumping or countervailing duty orders. Customs brokers do this by looking the shipment's respective eight-digit code under the Harmonized Tariff System of the United States (HTSUS). Under CBP's proposed rule, the number of Section 321-ineligible HTSUS numbers would increase, but the customs brokers' would face zero compliance cost from this change, as the consulting of HTSUS numbers is already built into the electronic interfaces brokers use to engage with CBP.

For these reasons, the Coalition for a Prosperous America, asks that you return this proposed rule to CBP with the original notation of "not" economically significant so that it may proceed towards implementation. Thank you for your time and consideration of this letter.

Sincerely,



Michael Stumo, CEO
Coalition for a Prosperous America

² H290219: Request for Internal Advice; Duty-Free Informal Entry of Shipments for Consignment and Resale, under 19 U.S.C. §1321(a)(2)(C). (July 28, 2020).